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Substantively Consolidated SIPA Liquidation of
Bernard L. Madoff Investment Securities LLC and Bernard L. Madoff*

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

In re:

BERNARD L. MADOFF INVESTMENT
SECURITIES LLC,

Debtor.

IRVING H. PICARD, Trustee for the Liquidation of
Bernard L. Madoff Investment Securities LLC,

Plaintiff,

v.

SAUL B. KATZ, et al.,

Defendants.

Adv. Pro. No. 08-01789 (BRL)

SIPA LIQUIDATION

(Substantively Consolidated)

Adv. Pro. No. 10-05287 (BRL)

11 Civ.03605 (JSR)(HBP)

**TRUSTEE'S MOTION AND MEMORANDUM FOR ENTRY OF ORDER
PURSUANT TO SECTION 105(a) OF THE BANKRUPTCY CODE
AND RULES 2002(a)(3) AND 9019(a) OF THE FEDERAL RULES OF
BANKRUPTCY PROCEDURE APPROVING SETTLEMENT AGREEMENT**

TO: THE HONORABLE JED S. RAKOFF
UNITED STATES DISTRICT JUDGE

Irving H. Picard (the "Trustee"), as trustee for the substantively consolidated liquidation of Bernard L. Madoff Investment Securities LLC ("BLMIS") and Bernard L. Madoff ("Madoff," and together with BLMIS, the "Debtors"), by and through the Trustee's undersigned counsel, submits this motion and memorandum (the "Motion") seeking entry of an order, pursuant to section 105(a) of title 11, United States Code, 11 U.S.C. §§ 101 *et seq.* (the "Bankruptcy Code") and Rules 2002(a)(3) and 9019(a) of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), approving a settlement ("Settlement"), the terms and conditions of which are set forth in the Settlement Agreement and Release (the "Agreement")¹ by and among the Trustee and Saul B. Katz, Fred Wilpon, Mets Limited Partnership, and numerous related individuals and entities (collectively, the "Defendants")² (each of the Trustee and each of the

¹ The Agreement with the schedules and exhibit attached is annexed hereto as Exhibit B. To the extent there is any discrepancy between this Motion and the Agreement, the Agreement controls. Capitalized terms not defined herein shall have the meaning set forth in the Agreement.

² By Order of this Court dated March 13, 2012 [ECF No. 175], 32 of the Defendants named in the Trustee's Amended Complaint were dismissed from the action as a result of the dismissal of various of the Trustee's claims, as follows: and Sterling Mets Associates, Sterling Mets Associates II, Mets One LLC, Mets Partners, Inc., C.D.S. Corp., Coney Island Baseball Holding Company L.L.C., Brooklyn Baseball Company L.L.C., 157 J.E.S. LLC, Air Sterling LLC, BAS Aircraft LLC, Bon-Mick, Inc., Charles 15 Associates, Charles 15 LLC, Charles Sterling LLC, Ruskin Garden Apartments LLC, SEE Holdings, I, SEE Holdings II, Sterling Brunswick Corporation, Sterling Equities Investors, Sterling Heritage L.L.C., Sterling Jet Ltd., Sterling Jet II Ltd., Sterling PathoGenesis Company, Sterling Third Associates, Valley Harbor Associates, Kimberly Wachtler, Minor 1, Minor 2, Michael Schreier, Realty Associates Madoff II, Sterling American Property III L.P., and Sterling American Property IV L.P. (collectively, "Dismissed Defendants") The remaining defendants in this action are Amy Beth Katz, Arthur Friedman, Bon Mick Family Partners L.P., Bruce N. Wilpon, Charles Sterling Sub LLC, College Place Enterprises LLC, Daniel Wilpon, David Katz, Dayle Katz, Debra Wilpon, Deyva Schreier Arthur, Edward M. Tepper, Elise C. Tepper, Estate of Leonard Schreier, FFB Aviation LLC, Fred Wilpon, Fred Wilpon Family Trust, FS Company L.L.C., Gregory Katz, Heather Katz Knopf, Howard Katz, Iris J. and Saul B. Katz Family Foundation, Inc., Iris Katz, Jacqueline G. Tepper, Jason Bacher, Jeffrey Wilpon, Jessica Wilpon, Judith Wilpon, Judy and Fred Wilpon Family Foundation, Inc., Katz 2002 Descendants' Trust, L. Thomas Osterman, Marvin B.

Defendants a “Party” and collectively, the “Parties”). In support of the Motion, the Trustee respectfully represents as follows:

PRELIMINARY STATEMENT

1. The Parties’ Settlement averted a weeks-long jury trial that was scheduled to commence on March 19, 2012. At issue in the trial was the Trustee’s recovery of a maximum of approximately \$303 million in withdrawals of principal invested by the Defendants with BLMIS in the two years prior to commencement of its liquidation proceeding under the Securities Investor Protection Act, 15 U.S.C. §§ 78aaa *et seq.* (“SIPA”).³ In addition, by this Court’s Order dated March 5, 2012, which granted the Trustee’s motion for partial summary judgment, the Defendants were liable to the Trustee for up to \$83,309,162. The Court indicated that it intended to determine the amount and apportionment of the judgment debt by subsequent order, potentially after further court proceedings. It is certain that any judgment entered following the trial would have resulted in one or more appeals that could have taken years to resolve.

Tepper, Mets II LLC, Mets Limited Partnership, Michael Katz, Natalie Katz O'Brien, Philip Wachtler, Phyllis Rebell Osterman, Red Valley Partners, Richard Wilpon, Robbinsville Park LLC, Robin Wilpon Wachtler, Ruth Friedman, Saul B. Katz, Saul B. Katz Family Trust, Scott Wilpon, SEE Holdco LLC, Sterling 10 LLC, Sterling 15C L.L.C., Sterling 20 LLC, Sterling Acquisitions LLC, Sterling American Advisors II L.P., Sterling American Property V L.P., Sterling Brunswick Seven L.L.C., Sterling DIST Properties LLC, Sterling Equities, Sterling Equities Associates, Sterling Internal V LLC, Sterling Mets L.P., Sterling Thirty Venture LLC, Sterling Tracing LLC, Sterling Twenty Five, LLC, Sterling VC IV LLC, Sterling VC V LLC, Todd Katz, Valerie Wilpon, and Wilpon 2002 Descendants' Trust (collectively, “Remaining Defendants”). References to the Defendants means collectively the Dismissed Defendants and the Remaining Defendants in the Action. Information with respect to investments and receipts by specific Defendants and account holders with BLMIS is set forth in Schedules 1 and 2 to the Agreement, as discussed in the Motion.

³ The approximate \$303 million was subject to downward adjustment in accordance with the Court’s March 14, 2012 Order [ECF No. 177], in which the Court ruled that Defendants had the burden of proving, by a preponderance of the evidence as part of their affirmative defense, that they received the transfers at issue in good faith. The Court also indicated that the Trustee’s claim to recover withdrawals of principal was limited to withdrawals of principal invested with BLMIS within two years of the Filing Date.

2. Indeed, more than the over \$386 million in two-year transfers of principal and “fictitious profits” was at stake in the appellate process when the Trustee’s intended appeal of this Court’s Opinion and Order dated September 27, 2011 [ECF No. 40] is taken into consideration. By that Opinion and Order, the Court dismissed various claims asserted by the Trustee against the Defendants, including claims to avoid and recover fictitious profits they withdrew from BLMIS beyond the two-year period preceding the Filing Date. The Court also held that the Trustee could avoid and recover transfers of principal during the relevant two-year period only if Defendants were “willfully blind” to the BLMIS fraud.

3. The Agreement represents a good faith, complete, and final Settlement between the Trustee and the Defendants as to any and all disputes between them on the terms and conditions as set forth in the Agreement.

4. Not only have the Parties averted a protracted and expensive trial and lengthy appeals through the Settlement, but also, and most important to the Trustee, the Settlement enables the BLMIS customer fund to recoup fictitious profits received by the Defendants during the six-year period prior to the commencement of BLMIS’s SIPA proceeding. Specifically, under the Agreement, Defendants will make a settlement payment to the Trustee in the aggregate sum of \$162,000,000.00 (“Settlement Payment”). The Settlement Payment will increase the total and percentage allocation to allowed claims of customers from the fund of customer property. Moreover, the Settlement has been structured in such a way as to make the full amount of the Settlement Payment collectable, despite Defendants’ restrictive cash flow and lender covenants, all of which were key factors that influenced the Trustee’s decision to settle on the terms set forth in the Agreement. After reviewing the evidence developed during discovery, including information not available to the Trustee at the time the complaint was filed, and a consideration

of the costs and uncertainty inherent in any litigation and the financial information of the Defendants, the Trustee, in the exercise of his business judgment, determined that it would not be appropriate to pursue the willful blindness claim and to resolve the remaining claims by this Settlement rather than continue to litigate them. For all of these reasons, the Trustee believes that the Agreement is fair and in the best interests of the BLMIS customer fund and the Estate.

BACKGROUND AND RELEVANT PROCEDURAL HISTORY

5. On December 11, 2008 (the "Filing Date"), the Securities and Exchange Commission ("Commission") filed a complaint in the United States District Court for the Southern District of New York (the "District Court") against the Debtors (Case No. 08 CV 10791). The complaint alleged that the Debtors engaged in fraud through the investment advisor activities of BLMIS.

6. On December 15, 2008, pursuant to section 78eee(a)(4)(A) of SIPA, the Commission consented to a combination of its own action with an application of the Securities Investor Protection Corporation ("SIPC"). Thereafter, pursuant to section 78eee(a)(3) of SIPA, SIPC filed an application in the District Court alleging, *inter alia*, that BLMIS was not able to meet its obligations to securities customers as they came due and, accordingly, its customers needed the protection afforded by SIPA.

7. On that date, the District Court entered the Protective Decree, to which BLMIS consented, which, in pertinent part:

- (i) appointed the Trustee for the liquidation of the business of BLMIS pursuant to section 78eee(b)(3) of SIPA;
- (ii) appointed Baker & Hostetler LLP as counsel to the Trustee pursuant to section 78eee(b)(3) of SIPA; and
- (iii) removed the case to the United States Bankruptcy Court ("Bankruptcy Court") pursuant to section 78eee(b)(4) of SIPA.

8. At a plea hearing (the “Plea Hearing”) on March 12, 2009, in the criminal action filed against him by the United States Attorney’s Office for the Southern District of New York, Madoff pleaded guilty to an 11-count criminal information, which included securities fraud, money laundering, theft and embezzlement counts. At the Plea Hearing, Madoff admitted that he “operated a Ponzi scheme through the investment advisory side of [BLMIS].” (Plea Hr’g Tr. at 23:14-17). On June 29, 2009, Madoff was sentenced to a term of imprisonment of 150 years.

9. On April 13, 2009, an involuntary bankruptcy petition was filed against Madoff. On June 9, 2009, the Bankruptcy Court entered an order substantively consolidating the chapter 7 estate of Madoff into BLMIS’s estate in the SIPA liquidation proceeding (the consolidated Madoff and BLMIS estates collectively are referred to as the “BLMIS Estate”).

10. On or about June 18, 2009, certain Defendants filed customer claims against the BLMIS Estate in connection with the BLMIS accounts.

11. On December 7, 2010, the Trustee filed a multi-count complaint in the Bankruptcy Court (the “Action”), which was subsequently amended on March 18, 2011 (“Amended Complaint”) and which asserted claims against Defendants pursuant to sections 544, 547, 548, 550, 551 of the Bankruptcy Code, SIPA § 78fff-2(c)(3), the New York Fraudulent Conveyance Act (New York Debtor and Creditor Law (§§ 273-279) and the New York Civil Procedures Law. [Bankr. ECF Nos. 1 and 34]. Specifically, the Trustee’s Amended Complaint sought, among other relief, to avoid and recover all transfers of fictitious profits from BLMIS to Defendants from the beginning of their investment relationship with BLMIS until December 11, 2008, as well as all transfers of principal from BLMIS to Defendants during the six years prior to the commencement of the SIPA proceeding. Since the litigation commenced, Defendants have

disputed any liability to the BLMIS Estate under all counts alleged in the Trustee's Amended Complaint, including any liability as to transfers of fictitious profits.

12. On March 20, 2011, Defendants filed a motion in the Bankruptcy Court to dismiss the Amended Complaint or, in the alternative, for summary judgment ("Motion to Dismiss").

[Bankr ECF No. 56]

13. On May 26, 2011, Defendants filed a motion to withdraw the reference of the matter to the District Court, [ECF No. 1], and by Order dated July 5, 2011 [ECF No. 19], this Court granted the motion and withdrew the automatic reference of the adversary proceeding to the Bankruptcy Court for all purposes. Since that date, the litigation has proceeded before this Court. Certain other salient opinions and orders affecting the outcome of the litigation are mentioned below.

14. By Order dated July 12, 2011 ("Bankruptcy Court's Allocation Order") [Bankr. ECF No. 4217], the Bankruptcy Court approved the Trustee's initial allocation of property to the customer property fund and authorized the Trustee to make an interim distribution to customers. Pursuant to that Order, on or about October 5, 2011, the Trustee made a first interim distribution to customers holding allowed claims as of September 30, 2011, in the approximate amount of 4.602% per dollar of their allowed claims. No Defendant held an allowed claim as of that date, and, therefore, no Defendant received a distribution at that time.

15. By Opinion and Order dated September 27, 2011 [ECF No. 40], this Court granted in part and denied in part the Defendants' Motion to Dismiss, dismissing various claims alleged by the Trustee in the Amended Complaint, with the exception of Count 1, which sought to avoid, pursuant to section 548(a)(1)(A) of the Bankruptcy Code, alleged intentional fraudulent transfers from BLMIS to Defendants, and Count 11, which sought to equitably subordinate

Defendants' customer claims pursuant to section 510(c) of the Bankruptcy Code. By Order dated September 28, 2011 [ECF No. 41], the Court sought further briefing from the Parties as to how to calculate principal and profit during the relevant two-year period.

16. By Opinion and Order dated January 17, 2012 [ECF No 78], this Court denied the Trustee's motion to have certain key, adverse rulings addressing provisions of the Bankruptcy Code certified for interlocutory appeal under 28 U.S.C. § 1292(b) or, alternatively, to have the Court enter a final judgment as to those rulings under Federal Rule of Civil Procedure 54(b). By that Opinion and Order, the Court also *sua sponte* reconsidered, and reversed, in part, its prior decision to dismiss Count 9 of the Trustee's Amended Complaint, thereby reinstating the Trustee's claim to recover subsequent transfers pursuant to section 550(a) of the Bankruptcy Code in accordance with the Court's September 27, 2011 order.

17. As discussed above, by Order dated March 5, 2012 [ECF No. 142], the Court granted the Trustee's motion for partial summary judgment on the ground that Defendants did not provide "value" to BLMIS in return for transfers of fictitious profits they received. By the same Order, the Court denied Defendants' motion for summary judgment.

18. Since the Bankruptcy Court's Order on February 10, 2011 [Bankr. ECF No. 19] appointing former Governor Mario Cuomo as mediator, the Parties have met face-to-face on several occasions, and each Party at times has separately met with the mediator to discuss in good faith the prospects for settlement. The Parties also conducted frequent settlement negotiations by telephone. Despite proceeding at a rapid pace on all fronts to prepare for trial, including the preparation of documentary and testamentary evidence, contested pretrial motions and other submissions required under this Court's Individual Rules, the preparation of expert and

lay witnesses for trial, the negotiations not only contemporaneously continued, but also intensified as the trial date drew closer.

19. After extensive negotiations, the Parties reached a compromise. On March 16, 2012, counsel for the respective Parties signed a Memorandum of Understanding (“MOU”) that was disclosed and filed on March 19, 2012 [ECF No. 180]. A copy of the MOU is attached to this Motion as Exhibit A. Even though binding and enforceable by its terms, the Parties’ obligations as set forth in the MOU were made subject to Court approval pursuant to Bankruptcy Rule 9019, to be sought by no later than April 13, 2012, and any required lender approvals to be obtained by no later than that same date. The Parties also agreed to work expeditiously and in good faith to enter into definitive documentation reflecting the terms of the MOU and other terms customary for such agreements. The Agreement, including all schedules and the exhibit attached thereto and incorporated therein, is the definitive document that reflects all of the terms and conditions of the Parties’ Settlement. As noted above, a copy of the Agreement is attached as Exhibit B to this Motion.

THE TRUSTEE’S CLAIMS AGAINST DEFENDANTS

20. To fulfill his statutory investigative obligation, 15 U.S.C. § 78fff-1(d), the Trustee, assisted by his counsel and consultants, investigated the investments and withdrawals by the Defendants. That investigation included, without limitation, the review and analysis of Defendants’ transactional histories as reflected on the BLMIS account statements; correspondence and other records and documents available to the Trustee; interviews with third-parties, some of whom may have been called to testify at trial, a substantial review of third-party records and documents, and documents and testimony provided by certain Defendants under Bankruptcy Rule 2004.

21. As a result of that investigation, the Trustee determined that in the aggregate Defendants withdrew \$162,726,768 in excess of their principal investments within six years before the Filing Date (the “Alleged Six-Year Profits”). Under the Parties’ Settlement, the amount of the Alleged Six-Year Profits has been rounded to \$162,000,000.

22. A detailed schedule of the Alleged Six-Year Profits reflecting the relevant BLMIS account number, the account holder’s name, the Defendant or Defendants related to each such BLMIS account, the amount of the Alleged Six-Year Profits by account, and each Defendant’s proportionate (percentage) share of the Alleged Six-Year Profits is attached as Schedule 2 to the Agreement. *See* Schedule 2 to Exh. B to this Motion.

DEFENDANTS’ CLAIMS AGAINST THE BLMIS ESTATE

23. Defendants filed numerous customer claims against the BLMIS Estate, including with respect to accounts in which they had deposited more money than they had withdrawn. Such accounts are sometimes referred to as “net loser” accounts. A schedule of Defendant “net loser” accounts reflecting the specific account number, account holder’s name, the net equity in each account, and the claim number that identifies the claim filed by each account holder is attached as Schedule 1 to the Agreement. *See* Schedule 1 to Exh. B to this Motion.

24. On March 1, 2010, the Bankruptcy Court issued an opinion affirming the Trustee’s “net equity” calculation of customer claims as the difference between the amounts a customer invested with BLMIS and the amounts that customer withdrew from BLMIS (the “Net Investment Method”). On March 8, 2010, the Bankruptcy Court entered an order [Bankr. ECF No. 2020], implementing the decision and certifying it for immediate appeal to the United States Court of Appeals for the Second Circuit, which on August 16, 2011, upheld the Trustee’s use of the Net Investment Method as the proper basis for allowing customer claims in *In re Bernard L. Madoff Inv. Sec. LLC*, 654 F.3d 229 (2d Cir. 2011) (“Second Circuit Net Equity Order”), *petition*

for cert. filed, Sterling Equities Assoc. v. Picard, No. 11-968, 2012 WL 396523 (Feb. 3, 2012).

Consistent with the Second Circuit Net Equity Order, the Trustee has determined the Defendants' net equity claims in accordance with the Net Investment Method in the amount of \$177,563,039.08 (collectively, the "Defendant Net Equity Claims").

OVERVIEW OF THE AGREEMENT

25. Certain salient terms and conditions of the Agreement are briefly summarized below. As stated above, the Agreement is attached as Exhibit B and should be reviewed for a complete account of other important terms, including with respect to mutual releases and the representations and warranties of the Parties.

Settlement Payment and Means of Satisfaction:

26. The Settlement Payment will be satisfied during the five, twelve-month periods following the Effective Date ("Settlement Payment Term"). Following the Effective Date, the Parties shall agree to specific dates for each period of the Settlement Payment Term, it being understood that the first period shall run twelve months from the Effective Date and the second through fifth periods shall each run twelve months following the end of the immediate prior twelve-month period. The first of such twelve-month periods shall be referred to as the "First Period"; the second twelve-month period shall be referred to as the "Second Period"; and so on through and including the "Fifth Period." During the Settlement Payment Term, the Settlement Payment may be made from multiple sources, as follows:

(a) Assignment of Defendant Net Equity Claims. Each Defendant unconditionally and irrevocably shall assign to the Trustee by written assignment (each an "Assignment" and collectively, the "Assignments") his, her or its Defendant Net Equity Claim (collectively, the "Assigned Claims").

(i) The Trustee will allow the Defendant Net Equity Claims, which will then be entitled to 100% of all distributions made by the Trustee from BLMIS customer property or any other source of funds available to satisfy the claims of “good faith” customers of BLMIS (collectively, the “Assigned Claim Recoveries”), meaning customers that were not complicit in the fraud that BLMIS perpetrated on its customers, except that Defendant Net Equity Claims will not be entitled to receive an advance from SIPC, as provided for in 15 U.S.C. § 78fff-3.

(ii) Specifically, without limitation, the Assigned Claim Recoveries will be entitled to a distribution (x) from any forfeiture fund established by the U.S. Department of Justice pursuant to 28 C.F.R. Part 9, up to the amount of the Settlement Payment, and (y) of the 4.602% “catch- up” distribution in the approximate amount of \$8,171,451 (“Catch-Up Payment”) pursuant to the Bankruptcy Court’s Allocation Order but not paid to the Defendants’ Net Equity Claims.

(iii) In connection with any distribution made in respect of the Assigned Claims, the Trustee shall immediately and automatically apply any and all Assigned Claim Recoveries to reduce Defendants’ obligations in respect of the Settlement Payment on a dollar-for-dollar basis. Promptly thereafter (but not later than seven (7) calendar days), the Trustee shall provide written notice to Defendants (x) of any remaining balance of the Settlement Payment after Assigned Claim Recoveries have been so applied, and (y) if/when the Settlement Payment is fully satisfied.

(iv) During the First through the Third Periods of the Settlement Payment Term, Defendants’ payment obligations pursuant to this Agreement are limited solely to Assigned Claim Recoveries, and, during such periods, no Defendant is obligated to make any

payment in excess of or in addition to Assigned Claim Recoveries. Upon full satisfaction of the Settlement Payment at any time during the Settlement Payment Term, the Trustee shall promptly (but not later than seven (7) calendar days) re-assign the Assigned Claims to Defendants by executing and delivering an assignment to each of the Defendants or their designee(s), limited to a maximum, potential recovery of the difference between the value of the aggregate amount of the Defendant Net Equity Claims and the value of the Defendant Net Equity Claims previously applied to reduce Defendants' obligations in respect of the Settlement Payment (such difference being the "Tail Payment"). Upon full satisfaction of the Settlement Payment, Defendants shall be entitled to receive any distributions in respect of Defendant Net Equity Claims up to the amount of the Tail Payment on the same basis as "good faith" customers of BLMIS, including any distribution made after the end of the Fifth Period.

(v) For the avoidance of doubt, unless and until the Settlement Payment is fully satisfied, the Trustee shall have no obligation to re-assign the Assigned Claims to the Defendants and the Defendants shall not be entitled to receive all or any part of the Tail Payment.

(b) Defendants' Installment Payments. If the Settlement Payment is not fully satisfied after applying all of the Assigned Claim Recoveries during the First through the Third Periods of the Settlement Payment Term, the remaining unpaid amount (the "Remaining Amount") shall be divided into two equal annual installments to be paid no later than the end of the Fourth and Fifth Periods of the Settlement Payment Term. The Trustee shall immediately and automatically apply any Assigned Claim Recoveries to the next due installment during the Fourth and Fifth Periods of the Settlement Payment Term to reduce the Remaining Amount. If the Trustee receives Assigned Claim Recoveries during the Fourth Period over the amount

necessary to satisfy the installment payment due in the Fourth Period, the Trustee will apply the excess to the installment due in the Fifth Period. The installment payments shall be made by wire transfer of immediately available funds in accordance with written instructions provided by the Trustee to Defendants no later than thirty (30) days prior to the relevant payment date.

(c) Each Defendant shall be responsible, on a several and not joint basis, for his, her, or its proportionate share of the Remaining Amount in proportion to his, her, or its proportionate share of the Alleged Six-Year Profits. With respect to accounts held jointly or as tenants in common, each Defendant shall be responsible, on a several and not joint basis, for his, her, or its proportionate share of that account's proportionate share of the Remaining Amount. A detailed schedule of the Alleged Six-Year Profits reflecting the relevant BLMIS account number, the account holder's name, the Defendant or Defendants related to each such BLMIS account, the amount of the Alleged Six-Year Profits by account, and each Defendant's proportionate (percentage) share of the Alleged Six-Year Profits is attached as Schedule 2 to the Agreement.

(d) Fred Wilpon and Saul Katz Guarantee. Fred Wilpon and Saul Katz ("Guarantors"), jointly and severally, irrevocably and unconditionally, and regardless of which Defendant fails to pay his, her, or its proportionate share of the Remaining Amount, hereby guarantee payment of the Remaining Amount owed to the Trustee up to an aggregate amount of Twenty-Nine Million United States Dollars (\$29,000,000) (the "Guarantee"). The Trustee shall not recover on the Guarantee unless a Defendant has not paid in full his, her, or its proportionate share of the Remaining Amount at the end of the Fourth and/or Fifth Periods of the Settlement Payment Term. If a Defendant does not pay his, her, or its proportionate share of the Remaining Amount when it is due, the Trustee shall, within three (3) business days, make a written demand

of the Guarantors, who shall promptly (but not later than three (3) business days from the date of the Trustee's written demand) satisfy the demand.

(e) Following the Effective Date, the Parties shall agree to specific dates for each of the First through the Fifth Periods of the Settlement Payment Term as follows:

| |
|--|
| EFFECTIVE DATE: [Month/Date/2012] |
| END OF FIRST PERIOD: Twelve calendar months following the Effective Date, or [Month/Date/2013] |
| END OF SECOND PERIOD: Twelve calendar months following the end of the First Period, or [Month/Date/2014] |
| END OF THIRD PERIOD: Twelve calendar months following the end of the Second Period, or [Month/Date/2015] |
| END OF FOURTH PERIOD: Twelve calendar months following the end of the Third Period, or [Month/Date/2016] |
| END OF FIFTH PERIOD: Twelve calendar months following the end of the Fourth Period, or [Month/Date/2017] |

(f) The Trustee will continue to apply any Assigned Claim Recoveries that he receives during the Fourth and Fifth Periods of the Settlement Payment Term to reduce the Remaining Amount and to that extent thereby reduce the respective obligations of (i) the Defendants to pay the Remaining Amount, and (ii) Fred Wilpon's and Saul Katz's obligation under their Guarantee.

Access to Financial Information

27. Pursuant to the terms of the MOU, Defendants agreed to provide the Trustee with reasonable access to financial information to enable the Trustee to confirm the financial basis for the Settlement and the representations made by Defendants in that regard. In particular, Defendants represented (a) that they did not have near-term liquidity to fund a \$162 million aggregate cash settlement and (b) that restrictive loan covenants precluded further borrowings

against assets. The access to financial information afforded the Trustee by Defendants in accordance with the MOU confirmed these representations.

Conditions

28. Defendants' obligations under the Agreement are subject to lender approvals to be obtained by no later than April 13, 2012. The Agreement is subject to approval under Bankruptcy Rule 9019 by the District Court and the entry of the District Court's order approving the terms of this Agreement ("Approval Order"). A hearing before this Court to consider approval of the Agreement will be scheduled to occur as soon as practicable after April 13, 2012.

Termination of Litigation

29. On or as soon as practical after the Effective Date, the Parties will file a stipulation of dismissal dismissing the Action with prejudice and without cost to any Party. Within three (3) business days after the Effective Date, Defendants shall withdraw their petition for a writ of *certiorari* filed with the United States Supreme Court from the Second Circuit Net Equity Order. Except for certain exceptions set forth in the Agreement, Defendants agree not to pursue or join any other litigation involving the Trustee or SIPC arising out of or relating to BLMIS, Madoff, their liquidation proceeding and the BLMIS Estate, including filing any motion, memorandum or other court document in any BLMIS-related litigation to which they are not a party. The Parties have agreed not to make any disparaging statement with respect to each other or the Settlement.

Defendant General Creditor Claims

30. The Trustee has agreed to treat the Defendant General Creditor Claims, as defined in the Settlement Agreement, on the same basis as he treats the same types of claims asserted by "good faith" customers, including with respect to any recoveries to which such claims may be entitled.

31. As a result of the Trustee's and his counsel's investigation, and the Parties' successful negotiations, aided by the Bankruptcy Court-appointed mediator, and after thorough and deliberate consideration of the uncertainty, costs and risks inherent in all litigation, the Trustee, in the exercise of his business judgment, determined that it was appropriate to reach a business resolution in light of all of the facts and circumstances.

RELIEF REQUESTED

32. By this Motion, the Trustee respectfully requests that the Court enter an order, substantially in the form of the proposed order annexed to this Motion as Exhibit C approving the Settlement as memorialized in the Agreement.

LEGAL DISCUSSION

33. Bankruptcy Rule 9019(a) states, in pertinent part, that "[o]n motion by the trustee and after notice and a hearing, the court may approve a compromise or settlement." Courts have held that in order to approve a settlement or compromise under Bankruptcy Rule 9019(a), the court should find that the compromise proposed is fair and equitable, reasonable, and in the best interests of a debtor's estate. *Air Line Pilots Assoc., Int'l v. Am. Nat'l Bank & Trust Co. of Chicago (In re Ionosphere Clubs, Inc.)*, 156 BR 414, 426 (S.D.N.Y. 1993), *aff'd*, 17 F. 3d 600 (2d Cir. 1994) (citing *Protective Comm. for Indep. Stockholders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424 (1968)).

34. The Second Circuit has stated that in determining whether to approve a compromise, the court should not decide the numerous questions of law and fact raised by the compromise, but rather should "canvass the issues and see whether the settlement 'fall[s] below the lowest point in the range of reasonableness.'" *Cosoff v. Rodman (In re W T. Grant Co.)*, 699 F.2d 599, 608 (2d Cir.), *cert. denied* *Cosoff v. Romon*, 464 U.S. 822 (1983) (quoting *Newman v. Stein*, 464 F.2d 689, 693 (2d Cir.), *cert. denied* 409 U.S. 1039 (1972)); *see also In re Chemtura*,

439 B.R. 561, 594 (Bankr. S.D.N.Y. 2010). “[T]he court need not conduct a ‘mini-trial’ to determine the merits of the underlying litigation.” *In re Purified Down Prods. Corp.*, 150 BR 519, 522 (S.D.N.Y. 1993).

35. The factors that courts in the Second Circuit consider when approving bankruptcy settlements are well established. These interrelated factors are:

(1) the balance between the litigation's possibility of success and the settlement's future benefits; (2) the likelihood of complex and protracted litigation, with its attendant expense, inconvenience, and delay, including the difficulty in collecting on the judgment; (3) the paramount interests of the creditors, including each affected class's relative benefits and the degree to which creditors either do not object to or affirmatively support the proposed settlement; (4) whether other parties in interest support the settlement; (5) the competency and experience of counsel supporting, and [t]he experience and knowledge of the bankruptcy court judge reviewing, the settlement; (6) the nature and breadth of releases to be obtained by officers and directors; and (7) the extent to which the settlement is the product of arm's length bargaining.

Fox v. Picard (In re Madoff), No. 10 Civ. 4652 (JGK), 2012 WL 990829, at *15 (S.D.N.Y. March 26, 2012) (quoting *Motorola, Inc. v. Official Comm. of Unsecured Creditors (In re Iridium Operating LLC)*, 478 F.3d 452, 462 (2d Cir. 2007) (internal quotation marks and citations omitted)).

36. Even though the Court has discretion to approve settlements and must independently evaluate the reasonableness of the settlement, *In re Rosenberg*, 419 B.R. 532, 536 (Bankr. E.D.N.Y. 2009), the business judgment of the trustee and his counsel should be considered in determining whether a settlement is fair and equitable. *In re Chemtura Corp.*, 439 B.R. at 594. Finally, the Court should be mindful of the principle that “the law favors compromise.” *Vaughn v. Drexel Burnham Lambert Group, Inc. (In re Drexel Burnham Lambert Group, Inc.)*, 134 B.R. at 499, 505 (quoting *In re Blair*, 538 F.2d 849, 851 (9th Cir. 1976)).

37. This Court has presided over robust pre-trial motions in which the Parties have extensively outlined the facts and the law in support of and in opposition to the Trustee's claims, which have informed the Court of the Parties' relative positions. In light of the posture of this litigation, the Court can readily evaluate the factors discussed in paragraph 35 above and determine that each of the factors analyzed in light of the facts of this matter overwhelmingly supports approval of the Agreement. The Court also has observed and heard from experienced counsel who have advised the Parties in this matter, negotiated the MOU and the Agreement, and who seek the Court's approval of the Agreement.

38. The Settlement is fair and equitable and in the best interests of the BLMIS fund of customer property and the Estate. *See* Affidavit of Irving H. Picard in Support of the Motion (the "Picard Af'd"), ¶12, a true and accurate copy of which has been filed contemporaneously with this Motion. Overall, the terms of the Agreement fall well above the lowest point in the range of reasonableness and all of the following considerations influenced the Trustee's decision to settle:

(a) Benefit to Customer Fund. The Agreement enables the Trustee to increase the fund of customer property by the \$162 million Settlement Payment, an amount that far exceeds the maximum aggregate amount of \$83,309,162 of two-year transfers of "fictitious profits" to which the Trustee was entitled under the Court's summary judgment ruling. Picard Af'd ¶7. Upon the Effective Date, the Assigned Claims will be entitled to the Catch-Up Payment in the approximate amount of \$8,171,451, which will immediately increase the fund of customer property while simultaneously and automatically reducing Defendants' Settlement Payment by that same amount. *Id.* ¶9. The BLMIS customer property fund similarly will benefit

each time the Trustee makes a further interim distribution during the Settlement Payment Term.

Id.

(b) Administrative Efficiency. Through the Assignments, administering the distributions to the Assigned Claims becomes virtually an electronic book entry, which facilitates a contemporaneous paydown of Defendants' Settlement Payment with a commensurate increase to the BLMIS customer fund. *Id.* The Assignments thus enable the Assigned Claims to be centrally controlled by the Trustee, which is efficient and less costly. *Id.*

(c) Avoidance of the Cost and Delay of Further Litigation. The Agreement eliminates the expense and delay of the actual trial with the Defendants that would have lasted at least two weeks, and the Parties' counsel working close to around the clock during that time. *Id.*

¶6. The Agreement eliminates the disruption that the trial would cause to the numerous witnesses who would be standing by. The Agreement also eliminates the inevitable delay caused by appeals from judgments entered by this Court in this proceeding, which benefits the BLMIS fund of customer property and the Estate as a whole. *Id.* Regardless of which side prevailed at trial, an appeal would have been taken from a final judgment and perhaps cross appeals. *Id.*

(d) Financial Considerations. As discussed above, in accordance with the MOU, Defendants have afforded counsel for the Trustee access to certain financial information to confirm the financial basis for the Settlement and Defendants' representations related thereto. Through review of the information made available to the Trustee's counsel, the Trustee has confirmed Defendants' representations and the financial basis for the settlement. *Id.* ¶8. Defendants' lack of near-term liquidity and restrictive lender covenants were factors bearing on the Trustee's determination that the Settlement was the best means of recovering fictitious profits received by Defendants and thereby increasing the fund of customer property. *See Id.* With

collectability of a favorable judgment in doubt, the Trustee found a way to structure the Settlement from multiple payment sources that are not solely dependent upon the Defendants' financial resources but rather on the Trustee's own ability to maximize the BLMIS customer fund. *Id.* ¶9. The Settlement is a practical and fair compromise of complex litigation that will increase the fund of customer property and thus in the best interests of customers holding allowed claims. *See Id.* ¶12.

(e) Finality. The Agreement puts a final end to the Trustee's litigation against Defendants and to Defendants' participation in any litigation involving the Trustee and the BLMIS liquidation proceedings and achieves peace. *Id.* ¶11. The Parties undertook good faith settlement negotiations that culminated with the signing of the MOU. Even though Defendants' agreement not to pursue further the appeal from the Second Circuit Net Equity Order, for example, alone will not enable the Trustee to free funds that he holds in reserve pending the outcome of appeals from favorable settlements, the Settlement is another positive step toward the Trustee's goal of distributing as much of the customer fund as possible, as soon as possible, to innocent investors from the approximate \$9 billion in recoveries and agreements to recover that the Trustee and his counsel have achieved to date. *See Id.* The Trustee still must maintain sufficient reserves in case the Second Circuit's decision should be reversed and the claims of "net winner" customers that have been denied to date become allowable and eligible for a distribution from the customer fund. *See Id.*

39. For all of the reasons discussed above, the Agreement is well within the "range of reasonableness," *In re W.T. Grant Co.*, 699 F.2d at 608 (quoting *Newman v. Stein*, 464 F.2d at 693), and confers a substantial benefit on the BLMIS fund of customer property and the Estate. The Trustee respectfully requests that the Court approve the Agreement. *Id.* ¶12.

NOTICE

40. In accordance with Bankruptcy Rules 2002 and 9019, and the Order Establishing Notice Procedures and Limiting Notice entered by the Bankruptcy Court on December 5, 2011 ("Bankruptcy Court's Order Limiting Notice") [Bankr. ECF. No. 4560], notice of this Motion has been given to (i) SIPC; (ii) the SEC; (iii) the Internal Revenue Service; (iv) the United States Attorney for the Southern District of New York; and (v) Davis Polk & Wardwell LLP, Attn: Robert F. Wise, Jr., Esq., 450 Lexington Avenue, New York, NY 10017. Also in accordance with the Bankruptcy Court's Order Limiting Notice, the Trustee has provided notice by e-mail to interested parties in the SIPA liquidation proceeding pending before the Bankruptcy Court of the following: the Motion filed with this Court and the ECF No. of the Motion on this Court's docket, together with the Case No. assigned by this Court; the date and time scheduled for the hearing at which this Court will consider the Motion; the date by which objections, if any, must be filed with this Court, and the name and address of the persons to be served with a copy of any objections.

WHEREFORE, the Trustee respectfully requests entry of an order substantially in the form of Exhibit C granting the relief requested in the Motion.

Respectfully submitted,

Dated: April 13, 2012
New York, New York

/s/ David J. Sheehan
Baker & Hostetler LLP
45 Rockefeller Plaza
New York, New York 10111
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*Attorneys for Irving H. Picard, Trustee for the
Substantively Consolidated SIPA Liquidation of
Bernard L. Madoff Investment Securities LLC and
Bernard L. Madoff*

EXHIBIT A

Picard v. Katz, The Mets Ltd. Partnership

Docket as a:

Memorandum of Understanding

11cv3605(JSR)

| |
|----------------------|
| USDC SDNY |
| DOCUMENT |
| ELECTRONICALLY FILED |
| DOC #: |
| DATE FILED: 3/19/12 |

The Trustee (the "Trustee") for the Liquidation of Bernard L. Madoff Investment Securities LLC ("BLMIS") and the Defendants (the "Defendants") in the litigation (the "Madoff Litigation") captioned Picard v. Katz, et al. Civ. 03605 (JSR), agree to a final settlement (the "Settlement") on the terms set forth below.

1. Legally Binding Agreement. This agreement, which is made as of March 16, 2012, (the "Agreement") sets forth all of the material terms of the Settlement and is intended to be legally enforceable and binding on the parties.

2. Mutual Releases. The Trustee and the Defendants will release each other from any and all claims that have been or could have been asserted in the Madoff Litigation or any other present or future litigation or proceeding relating to or arising out of the liquidation of BLMIS (the "Trustee Claims"). Such releases shall exclude any claim arising out of the enforcement of this Agreement.

3. Payment Obligations. The Defendants will pay or cause to be paid to the Trustee an aggregate amount of \$162 million (the "Settlement Payment"). The Settlement Payment will be made as follows:

- (a) The Defendants will unconditionally and irrevocably assign to the Trustee 100% of all recoveries in respect of their Customer Claims from any source, including from any forfeiture fund established by the U.S. Department of Justice pursuant to 28 C.F.R. Part 9 ("Customer Claim Recoveries"), up to and including the amount of the Settlement Payment during the five years from the date of court approval of this Agreement. For the avoidance of doubt, the Defendants will be entitled to retain any Customer Claim Recoveries in excess of the Required Payment.
- (b) During the first three years after the date of court approval of this Agreement, the Defendants' payment obligation hereunder is limited to Customer Claim Recoveries (i.e., during such three year period, the Defendants will be under no obligation to make any payments in excess of Customer Claim Recoveries).
- (c) If by the end of the third year, the payments to the Trustee from Customer Claim Recoveries have not satisfied the Settlement Payment, the remaining unpaid amount (the "Remaining Amount") shall be divided into two equal annual installments payable by Defendants at the end of the fourth and fifth years, less any additional Customer Claim Recoveries received and assigned to the Trustee during those years. Subject to paragraph 5 below, payment obligations pursuant to this clause (c) will be several, not joint, among the Defendants proportional to the respective "six year fictitious profits" claims against each Defendant, as set forth in the Madoff Litigation.

4. Claims Against Madoff Estate and Similar Matters. The Defendants' Customer Claims shall be allowed in full and will be entitled to full recovery thereon on the same basis as all other "good faith" BLMIS customers, except that (i) SIPC will not be obligated to "advance" funds to the

Defendants pursuant to SIPA Section 78 fff-3 and (ii) Customer Claim Recoveries will be assigned as set forth above. "Customer Claims" means all claims of any Defendant against the BLMIS Estate, the fund for victims of BLMIS established by the U.S. Department of Justice or any similar fund for the benefit of BLMIS customers. The parties agree that Defendants' Customer Claims total approximately \$178 million.

5. Guarantee. Fred Wilpon and Saul Katz, jointly and severally, and on behalf of all Defendants, will irrevocably and unconditionally guarantee the payment of the Remaining Amount up to a total aggregate amount of \$29 million.

6. Termination of Litigation. The parties will stipulate to the dismissal with prejudice of the Madoff Litigation. The Defendants agree to terminate and not pursue any other litigation involving the Trustee or SIPC arising out of or relating to BLMIS, including the "net equity" appeal.

7. Announcements. The announcement of the Settlement will include a statement by the Trustee that he has reviewed the evidence and determined that he will no longer pursue the willful blindness claim against Defendants. All parties agree not to make any disparaging statement with respect to each other or the Settlement.

8. Access to Information. From and after the date hereof until April 13, 2012, the Defendants will provide the Trustee with reasonable access to information that enables the Trustee to confirm the financial basis for the Settlement and the representations of the Defendants.

9. Conditions. Notwithstanding any provision of this Agreement to the contrary, the obligations of the Trustee are subject to the approval of the Settlement by the District Court pursuant to Bankruptcy Rule 9019. Notwithstanding any provision of this Agreement to the contrary, the obligations of the Defendants under this Agreement are subject to the receipt of all required lender approvals. The parties will seek to obtain the required approvals as expeditiously as possible, but in no event later than April 13, 2012.

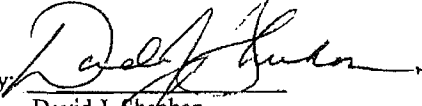
10. Definitive Documentation. The parties will work in good faith to enter into definitive documentation reflecting the terms set forth above and other terms customary for agreements of this type as expeditiously as reasonably possible, but in no event later than April 13, 2012. In the event that the parties are not able to reach agreement with respect to any terms of the definitive documentation by such date, those terms will be resolved through a process of binding arbitration, with the arbitration to be conducted by a lawyer selected by former Governor Mario Cuomo. The arbitrator's obligation will be to resolve any disagreement by reference to the terms that are customary for agreements of this type. Regardless of whether any terms are to be resolved through arbitration, the Settlement shall be binding on the parties.

11. Governing Law. This Agreement will be governed by and construed in accordance with the laws of the State of New York without regard to the conflict of law rules thereof that would provide for the application of the law of any other jurisdiction, and each party consents to the exclusive jurisdiction of the United States District Court for the Southern District of New York with respect to any matter arising out of, or relating to, the Settlement.

12. Miscellaneous. This Agreement shall be binding upon and inure to the benefit of each party hereto and their respective successors, heirs, personal representatives and estates. This

Agreement may be signed in any number of counterparts, each of which shall be deemed an original, with the same effect as if the signatures thereto and hereto were upon the same instrument.

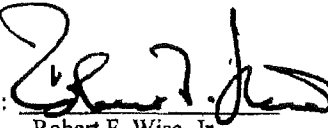
For the SIPA Trustee for the Liquidation
of Bernard L. Madoff Securities LLC

By: 
David J. Sheehan

BAKER & HOSTETLER LLP
45 Rockefeller Plaza
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Telephone: (212) 589-4200

*Attorneys for Irving H. Picard, Esq.
Trustee for the Substantively
Consolidated SIPA Liquidation of
Bernard L. Madoff Investment
Securities LLC And Bernard Madoff*

For the Defendants

By: 
Robert F. Wise, Jr.

DAVIS POLK & WARDWELL LLP
450 Lexington Avenue
New York, New York 10017
(212) 450-4000

Attorneys for Defendants

EXHIBIT B

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

| | | |
|-----------------------|---|------------------------|
| ----- | X | |
| IRVING H. PICARD, | : | |
| | : | |
| Plaintiff, | : | |
| | : | |
| - against - | : | 11-CV-03605 (JSR)(HBP) |
| | : | |
| SAUL B. KATZ, et al., | : | |
| | : | |
| Defendants. | : | |
| ----- | X | |

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (this “Agreement”) is made and entered into as of April 13, 2012, by and among Irving H. Picard (“Trustee”), in his capacity as the trustee for the liquidation proceedings under the Securities Investor Protection Act, 15 U.S.C. §§ 78aaa *et seq.* (“SIPA”), of Bernard L. Madoff Investment Securities LLC (“BLMIS”) and the substantively consolidated estate of Bernard L. Madoff (“Madoff”), and Saul B. Katz, Fred Wilpon, Richard Wilpon, Michael Katz, Jeffrey Wilpon, David Katz, Gregory Katz, Arthur Friedman, L. Thomas Osterman, Marvin B. Tepper, Estate of Leonard Schreier, Jason Bacher, Mets Limited Partnership, Sterling Mets L.P., Mets II LLC, FS Company L.L.C., Bon Mick Family Partners L.P., Charles Sterling Sub LLC, College Place Enterprises LLC, FFB Aviation LLC, Iris J. and Saul B. Katz Family Foundation Inc., Judy and Fred Wilpon Family Foundation, Inc., Red Valley Partners, Robbinsville Park LLC, SEE Holdco, LLC, Sterling 10 LLC, Sterling 15C L.L.C., Sterling 20 LLC, Sterling American Advisors II L.P., Sterling Brunswick Seven L.L.C., Sterling DIST Properties LLC, Sterling Equities, Sterling Equities Associates, Sterling Internal V LLC, Sterling Thirty Venture LLC, Sterling Tracing LLC, Sterling Twenty Five LLC,

Sterling VC IV LLC, Sterling VC V LLC, Saul B. Katz Family Trust, Fred Wilpon Family Trust, Katz 2002 Descendants' Trust, Wilpon 2002 Descendants' Trust, Iris Katz, Judith Wilpon, Dayle Katz, Debra Wilpon, Valerie Wilpon, Amy Beth Katz, Heather Katz Knopf, Howard Katz, Natalie Katz O'Brien, Todd Katz, Bruce N. Wilpon, Daniel Wilpon, Jessica Wilpon, Robin Wilpon Wachtler, Philip Wachtler, Scott Wilpon, Ruth Friedman, Phyllis Rebell Osterman, Elise C. Tepper, Jacqueline G. Tepper, Edward M. Tepper, Devya Schreier Arthur, Sterling Acquisitions LLC, and Sterling American Property V L.P. (collectively the "Remaining Defendants"), and Sterling Mets Associates, Sterling Mets Associates II, Mets One LLC, Mets Partners, Inc., C.D.S. Corp., Coney Island Baseball Holding Company L.L.C., Brooklyn Baseball Company L.L.C., 157 J.E.S. LLC, Air Sterling LLC, BAS Aircraft LLC, Bon-Mick, Inc., Charles 15 Associates, Charles 15 LLC, Charles Sterling LLC, Ruskin Garden Apartments LLC, SEE Holdings I, SEE Holdings II, Sterling Brunswick Corporation, Sterling Equities Investors, Sterling Heritage L.L.C., Sterling Jet Ltd., Sterling Jet II Ltd., Sterling PathoGenesis Company, Sterling Third Associates, Valley Harbor Associates, Kimberly Wachtler, Minor 1, Minor 2, Michael Schreier, Realty Associates Madoff II, Sterling American Property III L.P., and Sterling American Property IV L.P. (collectively the "Dismissed Defendants" and, together with the Remaining Defendants, the "Defendants"). Each of the Trustee and each of the Defendants shall be referred to herein as a "Party" and together as the "Parties."

RECITALS

A. BLMIS and its predecessor were registered broker-dealers with the United States Securities and Exchange Commission (the "Commission") and members of the Securities Investor Protection Corporation ("SIPC");

B. On December 11, 2008, the Commission filed a complaint in the United States District Court for the Southern District of New York (the "District Court") against BLMIS and

Madoff. On December 12, 2008, the District Court entered an order which, among other things, appointed Lee S. Richards, Esq. as receiver (the “Receiver”) for the assets of BLMIS (No. 08-CV-10791(LSS));

C. On December 15, 2008, pursuant to section 78eee(a)(4)(A) of SIPA, the Commission consented to a combination of its own action with the application of SIPC. Thereafter, SIPC filed an application in the District Court under section 78eee(a)(3) of SIPA alleging, *inter alia*, that BLMIS was not able to meet its obligations to securities customers as they came due and, accordingly, its customers needed the protections afforded by SIPA. On December 15, 2008, the District Court granted the SIPC application and entered an order under SIPA, which, in pertinent part, appointed the Trustee as the trustee for the liquidation of the business of BLMIS under section 78eee(b)(3) of SIPA, removed the Receiver as the receiver for BLMIS, and removed the case to the United States Bankruptcy Court for the Southern District of New York (the “Bankruptcy Court”) under section 78eee(b)(4) of SIPA, where it is currently pending as Case No. 08-01789 (BRL);

D. On April 13, 2009, an involuntary bankruptcy petition under chapter 7 of title 11, United States Code, 11 U.S.C. §§ 101 *et seq.* (the “Bankruptcy Code”), was filed against Madoff. By Order dated June 2, 2009, the Bankruptcy Court substantively consolidated Madoff’s estate into the BLMIS estate in the SIPA liquidation proceeding (the BLMIS estate consolidated with Madoff’s estate collectively are referred to herein as the “BLMIS Estate”);

E. On or about June 18, 2009, certain Defendants filed customer claims in the SIPA liquidation proceeding in connection with their BLMIS accounts, including with respect to accounts in which they had deposited more money than they had withdrawn. The Trustee often refers to such accounts as “net loser” accounts.

F. On March 1, 2010, the Bankruptcy Court issued an opinion affirming the Trustee's calculation of customers' "net equity" claims as the difference between the amounts a customer invested with BLMIS and the amounts that customer withdrew from BLMIS (the "Net Investment Method"). On March 8, 2010, the Bankruptcy Court entered an order implementing its decision and certifying it for immediate appeal to the United States Court of Appeals for the Second Circuit, which on August 16, 2011, upheld the Trustee's use of the Net Investment Method as a proper basis for calculating "net equity" claims in *In re Bernard L. Madoff Inv. Sec. LLC*, 654 F.3d 229 (2d Cir. 2011) ("Second Circuit Net Equity Order"), *petition for cert. filed, Sterling Equities Assoc. v. Picard*, No. 11-968, 2012 WL 396523 (Feb. 3, 2012);

G. On December 7, 2010, the Trustee filed an action in the Bankruptcy Court captioned *Picard v. Katz, et al.*, Adv. Pro. No. 10-5287 (BRL) (the "Action"), and on March 18, 2011, filed an amended complaint (the "Amended Complaint") in the Action, which asserted claims under section 78fff-2(c)(3) of SIPA, sections 544(b), 547(b), 548(a), 550(a) and 551 of the Bankruptcy Code, the New York Debtor and Creditor Law § 270 *et seq.*, and other laws;

H. The Trustee alleged in the Amended Complaint, among other claims, that certain Defendants received avoidable transfers of "fictitious profits" during the six-year period preceding December 11, 2008 in the aggregate amount of One Hundred Sixty-Two Million Seven Hundred Twenty-Six Thousand Seven Hundred Sixty-Eight United States Dollars (\$162,726,768) (the "Alleged Six-Year Profits");

I. Prior to the filing of the Action, the Trustee undertook discovery concerning Defendants and their investments with BLMIS pursuant to Rule 2004 of the Federal Rules of Bankruptcy Procedure ("Rule 2004 Discovery"), during which Defendants, among others, produced documents to the Trustee and provided deposition testimony;

J. On March 20, 2011, Defendants filed a motion in the Bankruptcy Court to dismiss the Amended Complaint or, in the alternative, for summary judgment dismissing the Amended Complaint (the “Motion to Dismiss”);

K. On May 26, 2011, Defendants filed a motion pursuant to 28 U.S.C. § 157(d) in the District Court to withdraw the reference of the Action to the Bankruptcy Court;

L. By Order dated July 1, 2011 and ruling on August 19, 2011, the District Court withdrew for all purposes the reference of the Action to the Bankruptcy Court, which included withdrawal of the Motion to Dismiss;

M. By Order dated July 12, 2011 (the “Allocation Order”), the Bankruptcy Court approved the Trustee’s initial allocation of property to the customer property fund and authorized the Trustee to make an interim distribution to customers holding allowed “net equity” claims. Pursuant to that Order, on or about October 5, 2011, the Trustee made a first interim distribution to customers holding allowed “net equity” claims as of September 30, 2011, in the approximate amount of 4.602% per dollar of their allowed “net equity” claims. No Defendant held an allowed “net equity” claim as of that date, and, therefore, no Defendant received any portion of the distribution.

N. On September 27, 2011, the District Court issued an Opinion and Order (the “Dismissal Order”) denying in part and granting in part the Motion to Dismiss and dismissing all counts of the Amended Complaint except Count 1, which alleged that Defendants received intentional fraudulent transfers pursuant to section 548(a)(1)(A) of the Bankruptcy Code, and Count 11, which sought to equitably subordinate Defendants’ claims pursuant to section 510(c) of the Bankruptcy Code;

O. On October 7, 2011, the Trustee filed a motion (the “Certification Motion”) seeking certification of the rulings in the Dismissal Order for interlocutory appeal under 28 U.S.C. § 1292(b), or to have the District Court enter final judgment with respect to the dismissed claims under Rule 54(b) of the Federal Rules of Civil Procedure. On January 17, 2012, the District Court issued an Opinion and Order denying the Certification Motion and reinstating Count 9 of the Complaint insofar as it sought to avoid transfers under section 550(a) of the Bankruptcy Code in accordance with the Dismissal Order;

P. Between August 12, 2011 and January 13, 2012, the Parties engaged in discovery under Rules 26 through 34 of the Federal Rules of Civil Procedure, during which Defendants, among others, produced documents to the Trustee and provided deposition testimony;

Q. On January 26, 2012, Defendants filed a motion for summary judgment dismissing all remaining counts of the Amended Complaint, and the Trustee filed a motion for partial summary judgment as to Count 1 of the Amended Complaint insofar as his Count 1 claims sought to avoid an aggregate amount of Eighty Three Million Three Hundred Nine Thousand One Hundred Sixty Two United States Dollars (\$83,309,162) of transfers of “fictitious profits” from BLMIS to Defendants during the two-year period preceding December 11, 2008;

R. On March 5, 2012, the District Court issued an order setting forth the Court’s bottom line rulings denying Defendants’ motion for summary judgment and granting the Trustee’s motion for partial summary judgment while leaving unresolved, although capped at the \$83,309,162 sought by the Trustee, the amount of “fictitious profits” received by Defendants that were subject to avoidance;

S. On March 16, 2012, the Parties executed a legally binding Memorandum of Understanding (the “MOU”), in which they agreed to a final, binding, and legally enforceable

settlement of the Action (the “Settlement”). The Parties agreed to work expeditiously and in good faith to enter into definitive documentation reflecting the terms of the MOU and other terms customary for such agreements;

T. Pursuant to the MOU, the Trustee announced that, upon review of the evidence, he determined that he was no longer pursuing the willful blindness claims asserted against any Defendant; and

U. On March 19, 2012, the District Court reviewed the MOU, which requires, among other things, approval of the Settlement by the District Court and any necessary approval by Defendants’ lenders by no later than April 13, 2012.

NOW, THEREFORE, it is hereby **AGREED** by and among the Parties to the Agreement, for the good and valuable consideration set forth herein, the adequacy and sufficiency of which is recognized for all purposes, that:

1. **Definitions.** In addition to the definitions of various terms set forth elsewhere in this Agreement, the following terms shall have the following meanings as used in this Agreement:

(a) “Approval Order” means the order of the District Court approving the terms of this Agreement pursuant to Rule 9019 of the Federal Rules of Bankruptcy Procedure.

(b) “Defendant General Creditor Claim” means any claim, other than a Defendant Net Equity Claim (defined below), asserted by any Defendant, with respect to amounts claimed to be held on account for such Defendant at BLMIS at the time of its bankruptcy, against (i) the BLMIS Estate or (ii) any forfeiture or other fund, established or yet to be established, for the benefit of BLMIS customers. Defendants’ rights and the Trustee’s

obligations with respect to Defendant General Creditor Claims are set forth in paragraph 2(k) below.

(c) “Defendant Net Equity Claim” means the “net equity” claim of any Defendant in BLMIS’s SIPA liquidation proceeding, which the Trustee has determined in accordance with the Net Investment Method and which will be allowed in the aggregate amount of One Hundred Seventy-Seven Million Five Hundred Sixty-Three Thousand Thirty-Eight United States Dollars and Eight Cents (\$177,563,039.08), regardless of the source of payment in respect of such Claim. A schedule of each Defendant Net Equity Claim reflecting the specific account number, account holder’s name, the net equity in each account, and the claim number that identifies the claim filed by each account holder is attached as Schedule 1 to the Agreement. The Parties acknowledge and agree that if the Net Investment Method for calculating the value of “net equity” claims is found to be incorrect or is otherwise modified, the Trustee will retroactively adjust the calculation of the value of each Defendant Net Equity Claim to reflect the new methodology

(d) “Effective Date” means the date on which the District Court enters the Approval Order. The Parties acknowledge and agree that (i) prior to the Effective Date, the following shall be delivered to the Trustee: (x) an executed Assignment, as defined below, of each Defendant Net Equity Claim; and (y) an executed release (or executed acknowledgement of release) of any lien, interest or encumbrance, held prior to the Assignment by any lender to the Defendants or other third party, on or against any part, or all, of each Defendant Net Equity Claim and/or Assigned Claim Recoveries (as defined below) up to the amount of the Settlement Payment (as defined below) (such release or acknowledgement of release a “Release of Lien”), which shall remain in effect until the Settlement Payment is paid in full, and (ii) on the Effective

Date, the Trustee shall deliver to Defendants an executed stipulation of dismissal to be filed on, or as soon as practicable following, the Effective Date.

2. **Payment Obligation, Claims, and Related Matters.** On the terms and subject to the conditions and limitations set forth in this Agreement, Defendants will pay or cause to be paid to the Trustee an aggregate amount of One Hundred Sixty-Two Million United States Dollars (\$162,000,000) (the “Settlement Payment”). The Settlement Payment will be satisfied during the five, twelve-month periods following the Effective Date (the “Settlement Payment Term”). The first of such twelve-month periods shall be referred to as the “First Period”; the second twelve-month period shall run from the end of the First Period and be referred to as the “Second Period”; and each successive twelve-month Period thereafter shall run from the end of the prior Period through and including the “Fifth Period.” The Settlement Payment shall be satisfied by the following means:

(a) Assignment of Defendant Net Equity Claims. Each Defendant unconditionally and irrevocably agrees to assign to the Trustee by written assignment (individually, the “Assignment,” and collectively, the “Assignments”), the form of which is attached hereto as Exhibit A, his, her or its Defendant Net Equity Claim (collectively, the “Assigned Claims”) solely for the purpose of satisfying the Settlement Payment. No assigned Defendant Net Equity Claim (or recovery in respect of a Defendant Net Equity Claim in excess of amounts necessary to satisfy the Settlement Payment) shall become property of the BLMIS estate nor be used for any purpose other than to satisfy the Settlement Payment. The Trustee shall not transfer or assign any Defendant Net Equity Claim, except as expressly contemplated by this Agreement.

(b) Allowance of Defendant Net Equity Claims. The Trustee will allow the Defendant Net Equity Claims, which will then be entitled to full recovery on the same basis as “good faith” customers of BLMIS, except that Defendant Net Equity Claims will not be entitled to receive an advance from SIPC, as provided for in 15 U.S.C. § 78fff-3.

(c) Assigned Claim Recoveries. The Assigned Claims will be entitled to 100% of all distributions made by the Trustee from BLMIS customer property or any other payment of allowed claims of “good faith” customers of BLMIS from any source (collectively, “Assigned Claim Recoveries”), including, but not limited to, (i) from any forfeiture fund established by the U.S. Department of Justice pursuant to 28 C.F.R. Part 9 and (ii) the 4.602% “catch-up” distribution in the amount of Eight Million One Hundred Seventy-One Thousand Four Hundred Fifty-One United States Dollars (\$8,171,451) made pursuant to the Bankruptcy Court’s Allocation Order but not previously paid in connection with any Defendant Net Equity Claim. The Trustee represents that, as of the Effective Date, there has been only one (1) distribution from the fund of customer property to customers holding allowed “net equity” claims, such distribution occurred on or about October 5, 2011, pursuant to the Bankruptcy Court’s Allocation Order, and was in the amount of 4.602% of customers’ allowed “net equity” claims.

(d) In connection with any distribution made in respect of the Assigned Claims, any and all Assigned Claim Recoveries shall immediately and automatically be applied to reduce Defendants’ obligations in respect of the Settlement Payment on a dollar-for-dollar basis. Promptly thereafter (but not later than seven (7) calendar days), the Trustee shall provide written notice to Defendants (i) of any remaining balance of the Settlement Payment after

Assigned Claim Recoveries have been so applied and (ii) if/when the Settlement Payment is fully satisfied.

(e) During the First through the Third Periods of the Settlement Payment Term, Defendants' payment obligations pursuant to this Agreement are limited solely to Assigned Claim Recoveries, and, during such periods, no Defendant is obligated to make any payment in excess of or in addition to Assigned Claim Recoveries. Upon full satisfaction of the Settlement Payment at any time during the Settlement Payment Term, the Trustee shall promptly (but not later than seven (7) calendar days) re-assign the Assigned Claims to Defendants by executing and delivering an assignment to each of the Defendants or their designee(s), limited to a maximum, potential recovery of the difference between the value of the aggregate amount of the Defendant Net Equity Claims and the value of the Defendant Net Equity Claims previously applied to reduce Defendants' obligations in respect of the Settlement Payment (such difference being the "Tail Payment"). Upon full satisfaction of the Settlement Payment, Defendants shall be entitled to receive in full any distributions in respect of Defendant Net Equity Claims on the same basis as "good faith" customers of BLMIS, including any distribution made after the end of the Fifth Period.

(f) For the avoidance of doubt, unless and until the Settlement Payment is fully satisfied, the Trustee shall have no obligation to re-assign the Assigned Claims to the Defendants, and the Defendants shall not be entitled to receive all or any part of the Tail Payment.

(g) Defendants' Installment Payments. If the Settlement Payment is not fully satisfied after applying all of the Assigned Claim Recoveries during the First through the Third Periods of the Settlement Payment Term, the remaining unpaid amount of the Settlement

Payment (the "Remaining Amount") shall be divided into two equal annual installments to be paid no later than the end of the Fourth and Fifth Periods of the Settlement Payment Term. Any and all Assigned Claim Recoveries received during the Fourth and Fifth Periods shall immediately and automatically be applied to the next due installment during the Fourth and Fifth Periods of the Settlement Payment Term to reduce the payment in respect of the Remaining Amount for that Period. If the installment payment for the Fourth Period is satisfied in full by Assigned Claim Recoveries, any excess will be applied to the Fifth Period installment. The annual installment payments shall be made by wire transfer of immediately available funds in accordance with written instructions provided by the Trustee to Defendants no later than thirty (30) days prior to the relevant payment date.

(h) Each Defendant shall be responsible, on a several and not joint basis, for his, her, or its proportionate (*i.e.*, percentage) share of the Remaining Amount in proportion to his, her, or its proportionate share of the Alleged Six-Year Profits. With respect to accounts held jointly or as tenants in common, each Defendant shall be responsible, on a several and not joint basis, for his, her, or its proportionate share of that account's proportionate share of the Remaining Amount. A detailed schedule of the Alleged Six-Year Profits reflecting the relevant BLMIS account number, the account holder's name, the Defendant or Defendants related to each such BLMIS account, the amount of the Alleged Six-Year Profits by account, and each Defendant's proportionate share of the Alleged Six-Year Profits is attached as Schedule 2 to this Agreement.

(i) Fred Wilpon and Saul Katz Guarantees. Fred Wilpon and Saul Katz ("Guarantors"), jointly and severally, irrevocably and unconditionally, and regardless of which Defendant fails to pay his, her, or its proportionate share of the Remaining Amount, hereby

guarantee payment of the Remaining Amount owed to the Trustee up to an aggregate amount of Twenty-Nine Million United States Dollars (\$29,000,000) (the “Guarantee”). The Trustee shall not recover on the Guarantee unless a Defendant has not paid in full his, her, or its proportionate share of the Remaining Amount at the end of the Fourth and/or Fifth Periods of the Settlement Payment Term. In the event that a Defendant does not pay his, her, or its proportionate share of the Remaining Amount when it is due, the Trustee shall, within three (3) business days, make a written demand of the Guarantors, who shall promptly (but not later than three (3) business days from the date of the Trustee’s written demand) satisfy the demand. Under no circumstances shall the aggregate amount of any payments made by the Guarantors in satisfaction of the Guarantee exceed \$29,000,000.

(j) Following the Effective Date, the Parties shall agree to specific dates for each of the First through the Fifth Periods of the Settlement Payment Term as follows:

| |
|--|
| EFFECTIVE DATE: [Month/Date/2012] |
| END OF FIRST PERIOD: Twelve calendar months following the Effective Date, or [Month/Date/2013] |
| END OF SECOND PERIOD: Twelve calendar months following the end of the First Period, or [Month/Date/2014] |
| END OF THIRD PERIOD: Twelve calendar months following the end of the Second Period, or [Month/Date/2015] |
| END OF FOURTH PERIOD: Twelve calendar months following the end of the Third Period, or [Month/Date/2016] |
| END OF FIFTH PERIOD: Twelve calendar months following the end of the Fourth Period, or [Month/Date/2017] |

(k) The Trustee shall treat the Defendant General Creditor Claims on the same basis as he treats the same types of claims asserted by “good faith” customers, including with respect to any recoveries to which such claims will be entitled.

3. **Mutual Releases.**

(a) Except with respect to any rights and obligations arising under this Agreement (including rights and obligations relating to Defendant Net Equity Claims and Defendant General Creditor Claims), the Trustee, for himself and on behalf of BLMIS, Madoff, and the BLMIS Estate (“Trustee Releasers”), hereby fully, finally, and forever releases, remises, relinquishes, and discharges Defendants and their professionals and agents from any and all past, present, or future claims or causes of action (including any suit, petition, demand, or other claim in law, equity or arbitration) and from any and all allegations of liability or damages (including any allegation of duties, debts, reckonings, contracts, controversies, agreements, promises, damages, responsibilities, covenants, or accounts) of whatever kind, nature or description, direct or indirect, in law, equity or arbitration, absolute or contingent, in tort, contract, statutory liability or otherwise, based on willful blindness, strict liability, negligence, gross negligence, fraud, breach of fiduciary duty or otherwise (including attorneys’ fees, costs or disbursements) known or unknown, that are, have been, could have been, or might in the future be, asserted by the Trustee against Defendants based on, arising out of, or relating in any way to Madoff, BLMIS, their liquidation proceedings, the BLMIS Estate or any BLMIS account held in the name of any Defendant (the “Trustee Released Claims”).

(b) Except with respect to any rights and obligations arising under this Agreement (including rights and obligations relating to Defendant Net Equity Claims and Defendant General Creditor Claims), each of the Defendants for himself, herself or itself, and in

the case of a corporate or partnership Defendant, its shareholders, members, officers and directors, partners, their successors in interest and assigns (“Defendant Releasors”), hereby fully, finally, and forever releases, remises, relinquishes, and discharges the Trustee, his professionals and agents and the BLMIS Estate from any and all claims or causes of action (including any suit, petition, demand, or other claim in law, equity or arbitration) and from any and all allegations of liability or damages (including any allegation of duties, debts, reckonings, contracts, controversies, agreements, promises, damages, responsibilities, covenants, or accounts) of whatever kind, nature or description, direct or indirect, in law, equity or arbitration, absolute or contingent, in tort, contract, statutory liability or otherwise, based on strict liability, negligence, gross negligence, fraud, breach of fiduciary duty or otherwise (including attorneys’ fees, costs or disbursements) known or unknown, that are, have been, could have been, or might in the future be, asserted by Defendant Releasors against the Trustee based on, arising out of, or relating in any way to Madoff, BLMIS, their liquidation proceedings, the BLMIS Estate and any BLMIS account held by any of the Defendants (the “Defendant Released Claims”).

(c) With respect to any and all Trustee Released Claims or Defendant Released Claims, the Trustee and Defendant Releasors shall expressly waive or be deemed to have waived the provisions, rights, and benefits of California Civil Code § 1542 (to the extent it applies herein) and any provisions, rights, and benefits conferred by any law of any state or territory of the United States or principle of common law that is similar, comparable, or equivalent to California Civil Code § 1542, which provides:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR EXPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

Except with respect to the rights and obligations arising under this Agreement, the Trustee and Defendants each acknowledge that each may hereafter discover facts in addition to or different from those that each now knows or believes to be true with respect to the subject matter of the Trustee Released Claims or the Defendant Released Claims, respectively, but the Trustee and Defendants each shall expressly have and shall be deemed to have fully, finally, and forever settled, released, and discharged any and all Trustee Released Claims and Defendant Released Claims, respectively, known or unknown, suspected or unsuspected, contingent or non-contingent, whether or not concealed or hidden, which now exist or heretofore have existed, upon any theory of law or equity now existing or coming into existence in the future, including conduct that is negligent, reckless, intentional, with or without malice, or a breach of any duty, law or rule, without regard to the subsequent discovery or existence or such different or additional facts.

4. **Termination of Litigation.** On or as soon as practical after the Effective Date, the Parties will file a stipulation of dismissal dismissing the Action with prejudice and without cost to any Party. Within three (3) business days after the Effective Date, Defendants shall withdraw their petition for a writ of *certiorari* filed with the United States Supreme Court from the Second Circuit Net Equity Order. Defendants agree not to pursue or join any other litigation, or to provide legal counsel to any other defendant involved in any litigation, involving the Trustee or SIPC arising out of or relating to BLMIS, Madoff, their liquidation proceeding and the BLMIS Estate, including filing any motion, memorandum or other court document, except with respect to (i) any rights or obligations arising under this Agreement; (ii) the litigation involving, among others, Eric Saretsky on behalf of the participants in the Sterling Equities Employees Retirement Plan; and (iii) the litigation captioned *Picard v. Estate of Marjorie K.*

Osterman, et al. The Parties agree not to make any disparaging statement with respect to each other or the Settlement.

5. **Conditions.** Notwithstanding any provision of this Agreement to the contrary, the obligations of the Parties are subject to the receipt of (a) approval of the Settlement by the District Court pursuant to Rule 9019 of the Federal Rules of Bankruptcy Procedure and entry of the Approval Order, and (b) any required lender approvals, which shall be obtained by no later than April 13, 2012.

6. **Representations and Warranties.**

(a) The Trustee hereby represents and warrants to Defendants that, subject to the Approval Order: (i) he has the full power, authority and legal right to execute and deliver this Agreement and to perform his obligations hereunder; (ii) this Agreement has been duly executed and delivered by the Trustee and constitutes the valid and binding agreement of the Trustee, enforceable against the Trustee in accordance with its terms; and (iii) in executing this Agreement, the Trustee has done so with the full knowledge of any and all rights that he may have with respect to the controversies herein compromised, and the Trustee has received or has had the opportunity to obtain independent legal advice from his counsel with regard to the facts relating to said controversies and with respect to the rights arising out of said facts.

(b) Each Defendant, solely with respect to himself, herself, or itself, hereby represents and warrants to the Trustee that: (i) he, she, or it has the full power, authority, legal right and capacity to execute and deliver this Agreement and to perform his, her, or its respective obligations hereunder; (ii) he, she, or it has the full power, authority and legal right to execute and deliver to the Trustee the Assignment of his, her, or its Defendant Net Equity Claim, which has not previously been assigned, except pursuant to a lien that has been released as

contemplated in paragraph 1(d)(i)(y), in whole or in part; (iii) he, she, or it has taken such steps and actions, as necessary, such that the holders of any obligations entitled to notice from such Defendant have been given notice of this Agreement and Defendant's obligations to the Trustee under this Agreement; (iv) he, she or it has obtained a Release of Lien, a copy of which shall be provided to the Trustee prior to the Effective Date; (v) the Assigned Claim is free and clear of any lien, claim, interest or encumbrance held by any third party; (vi) this Agreement has been duly executed and delivered by such Defendant and constitutes the valid and binding agreement of such Defendant, enforceable against such Defendant in accordance with its terms; and (vii) in executing this Agreement, such Defendant has done so with the full knowledge of any and all rights that such Defendant may have with respect to the controversies herein compromised, and such Defendant has received or has had the opportunity to obtain independent legal advice from his, her, or its attorneys with regard to the facts relating to said controversies and with respect to the rights arising out of said facts.

(c) Each of the representations and warranties set forth in this paragraph 6 shall survive in perpetuity.

7. **Further Assurances.** Each Party shall execute and deliver any document or instrument reasonably requested by the other Party after the date of this Agreement to effectuate the intent of this Agreement.

8. **Return, Destruction, and Confidentiality of Documents.**

(a) Notwithstanding any other provision of this Agreement, and pursuant to the October 30, 2011 protective order entered in the Action, the provisions of which are incorporated herein by reference, any Party that received documents designated or identified as "Confidential" or "Highly Confidential" by any other Party that produced the documents (the

“Producing Party”) at any time in connection with the Action, including during Rule 2004 Discovery, the mediation relating to the Action, or in relation to this Agreement, shall, within thirty (30) days of the final disposition of the Action, (a) return to the offices of the Producing Party’s counsel all such documents, including any copies thereof, or (b) if the Producing Party does not require return of such documents, certify to counsel for the Producing Party that all such documents, including any copies thereof, have been destroyed. For the avoidance of doubt, the obligations under this paragraph to return documents to the Producing Party include documents produced by the Trustee to the Defendants.

(b) The Trustee agrees to maintain at all times the confidentiality of all information provided by Defendants, on or before the date hereof, that Defendants designated “Confidential” or “Highly Confidential.”

9. **Entire Agreement.** This Agreement (including all schedules and any exhibits hereto) constitutes the entire agreement and understanding between the Parties pertaining to the subject matter hereof and supersedes any and all prior or contemporaneous agreements, including the MOU, representations and understandings of the Parties concerning the subject matter hereof.

10. **Amendment; Waiver.** This Agreement may not be terminated, amended or modified in any way except by written instrument signed by all Parties hereto or their successors-in-interest. No waiver of any provision of this Agreement shall be deemed to constitute a waiver of any other provision hereof, whether or not similar, nor shall such waiver constitute a continuing waiver.

11. **Assignment.** This Agreement may not be assigned by any Party without the prior written consent of the other Parties, provided that nothing herein shall prohibit any Defendant

that is a corporation, partnership, limited liability company, or other entity from pledging or assigning its interest in this Agreement in connection with borrowings or the sale of all or substantially all of such Defendant's assets. In the event of such a pledge or assignment, the obligations of such Defendant shall remain in full force and effect and shall not be impaired. Any such assignor shall provide to the Trustee written notice of the assignment of its interest in this Agreement within ten (10) business days thereafter.

12. **Successors.** This Agreement shall be binding upon and inure to the benefit of each Party and his, her, or its respective successors, heirs, estates, and personal representatives.

13. **Construction.** This Agreement has been fully negotiated by the Parties. Each Party acknowledges and agrees that this Agreement has been drafted jointly, and the rule that ambiguities in an agreement or contract may be construed against the drafter shall not apply in the construction or interpretation of this Agreement. Words used herein, regardless of the number and gender specifically used, shall be deemed and construed to include any other number, singular or plural, and any other gender, masculine, feminine, or neuter, as the context indicates is appropriate. Any reference in this Agreement to a paragraph is to a paragraph of this Agreement. "Including" is not intended to be a limiting term.

14. **Headings.** The headings in this Agreement are inserted only as a matter of convenience and for reference and do not define, limit or describe the scope of this Agreement or the scope or content of any of its provisions.

15. **Choice of Law.** This Agreement and any claim related directly or indirectly to this Agreement shall be governed by and construed in accordance with the laws of the State of New York (without regard to the principle of conflicts of law thereof), the Bankruptcy Code, and SIPA. Each Party hereby waives on behalf of itself and its successors and assigns any and all

right to argue that the choice of New York law provision is or has become unreasonable in any legal proceeding.

16. **Choice of Forum.** Any action arising out of this Agreement, or relating to the performance or breach of the Parties hereunder or the interpretation hereof, shall be brought exclusively in the District Court, and each of the Parties (a) consents to jurisdiction in such court, (b) agrees that it will not bring any action relating to this Agreement, including the performance or breach or interpretation of this Agreement, in any court other than the District Court, and (c) agrees that any such action should, to the extent possible, be referred to Judge Jed S. Rakoff.

17. **WAIVER OF JURY TRIAL.** THE PARTIES EXPRESSLY AND IRREVOCABLY WAIVE, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT TO TRIAL BY JURY FOR ANY CLAIM, COUNTERCLAIM, ACTION, OR OTHER PROCEEDING ARISING UNDER OR RELATING TO THIS AGREEMENT, ANY RIGHTS OR OBLIGATIONS HEREUNDER, THE PERFORMANCE OF SUCH RIGHTS AND OBLIGATIONS OR THE RELATIONSHIP BETWEEN THE PARTIES, IN EACH CASE WHETHER SUCH CLAIM, COUNTERCLAIM, ACTION, OR OTHER PROCEEDING IS NOW EXISTING OR HEREAFTER ARISING, AND WHETHER SOUNDING IN CONTRACT, TORT, OR OTHERWISE.

18. **Expenses.** Each Party shall bear its respective expenses relating to or arising out of this Agreement, including, but not limited to, fees for attorneys and other advisors.

19. **Notices.** All notices, requests, demands, consents and communications necessary or required under this Agreement shall be in writing and shall be delivered by hand or sent by registered or certified mail (return receipt requested), by overnight courier (with confirmation), by facsimile (receipt confirmed), or by electronic means (receipt confirmed), in each case

addressed and copied as set forth on the applicable signature page hereto. A Party may change its address for receiving notice by giving notice of a new address in the manner provided herein. All such notices, requests, demands, consents and other communications shall be deemed to have been duly given or sent two (2) days following the date on which mailed, or on the date on which delivered by courier or by hand or by facsimile or electronic transmission (receipt confirmed), addressed as follows:

If to the Trustee:

Irving H. Picard
c/o Baker & Hostetler LLP
45 Rockefeller Plaza
New York, New York 10111
Facsimile No.: (212) 589-4201

If to any Defendant:

c/o Davis Polk & Wardwell LLP
450 Lexington Avenue
New York, New York 10017
Attention: Robert F. Wise, Jr.
Karen E. Wagner
Dana M. Seshens
Facsimile No.: (212) 701-5800

with copies to:

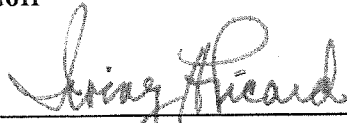
Baker & Hostetler LLP
45 Rockefeller Plaza
New York, New York 10111
Attention: David J. Sheehan
Fernando A. Bohorquez, Jr.
Facsimile No.: (212) 589-4201

20. **No Third-Party Beneficiaries.** Nothing contained in this Agreement is intended to confer any benefit upon any person or entity other than the Parties hereto and their respective successors and permitted assigns.

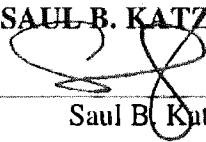
21. **Counterparts.** This Agreement may be executed and delivered in any number of counterparts, each of which so executed and delivered shall be deemed to be an original and all of which shall constitute one and the same document. Each Party may evidence its execution of this Agreement by delivery to the other Party of scanned or faxed copies of its signature, with the same effect as the delivery of an original signature.

Each Party has caused this Agreement to be duly executed and delivered as of the date set forth above.

**Irving H. Picard, the Trustee for the liquidation
proceedings of Bernard L. Madoff Investment
Securities LLC and the substantively
consolidated bankruptcy case of Bernard L.
Madoff**

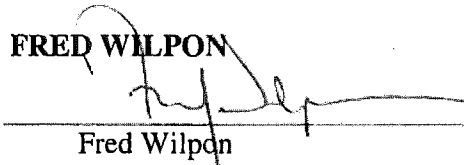

Irving H. Picard

SAUL B. KATZ



Saul B. Katz

FRED WILPON



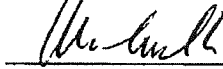
Fred Wilpon

RICHARD WILPON



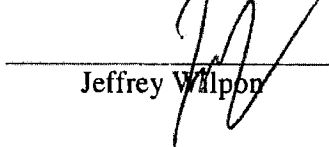
Richard Wilpon

MICHAEL KATZ



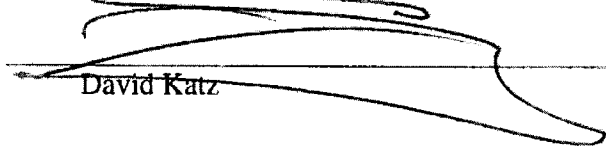
Michael Katz

JEFFREY WILPON



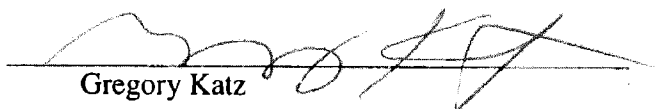
Jeffrey Wilpon

DAVID KATZ



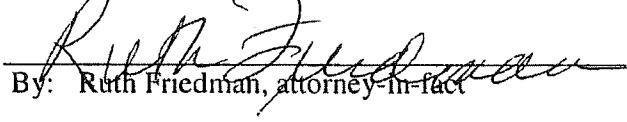
David Katz

GREGORY KATZ



Gregory Katz

ARTHUR FRIEDMAN


By: Ruth Friedman, attorney-in-fact

L. THOMAS OSTERMAN

L. Thomas Osterman

MARVIN B. TEPPER

Marvin B. Tepper

ESTATE OF LEONARD SCHREIER

By: Fred Wilpon, Co-administrator

By: Jason Bacher, Co-administrator

Mets Limited Partnership

By: C.D.S. Corp., its general partner

By: Fred Wilpon, CEO

Sterling Mets, L.P.


By: Mets Partners, Inc., its general partner

By: David P. Cohen, Executive Vice
President

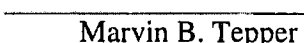
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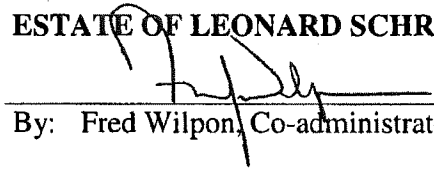
L. THOMAS OSTERMAN


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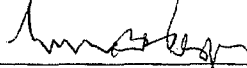
ARTHUR FRIEDMAN

By: Ruth Friedman, attorney-in-fact

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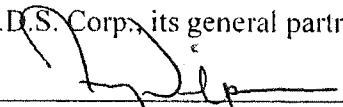
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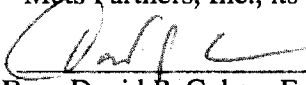
Mets Limited Partnership

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By: Fred Wilpon, CEO

Sterling Mets, L.P.

By: Mets Partners, Inc., its general partner



By: David P. Cohen, Executive Vice
President

Mets II LLC

By: Sterling Mets Associates II, its member



By: Michael Katz, Partner

FS COMPANY, L.L.C.

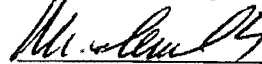
By: Sterling Heritage, L.L.C., its member



By: Michael Katz, Managing Member

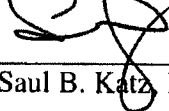
CHARLES STERLING SUB LLC

By: Charles Sterling 15 LLC, its manager



By: Michael Katz, Manager

COLLEGE PLACE ENTERPRISES LLC



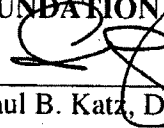
By: Saul B. Katz, Member

FFB AVIATION LLC



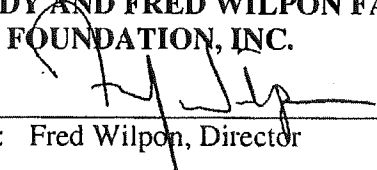
By: Michael Katz, Manager

**IRIS J. & SAUL B. KATZ FAMILY
FOUNDATION INC.**

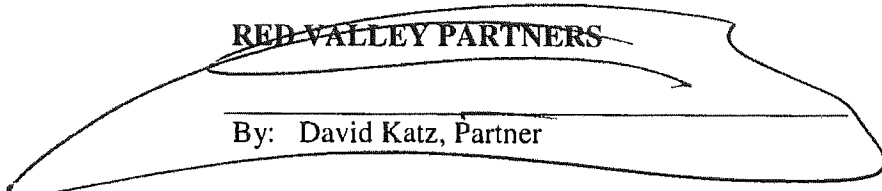


By: Saul B. Katz, Director

**JUDY AND FRED WILPON FAMILY
FOUNDATION, INC.**


By: Fred Wilpon, Director

RED VALLEY PARTNERS

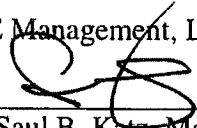

By: David Katz, Partner

ROBBINSVILLE PARK, LLC

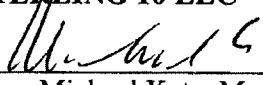

By: Michael Katz, Manager

SEE HOLDCO, LLC

By: SEE Management, LLC, its manager


By: Saul B. Katz, Member

STERLING 10 LLC


By: Michael Katz, Manager

STERLING 15C L.L.C.

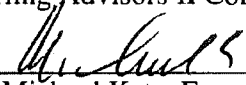

By: Michael Katz, Member

STERLING 20 LLC


By: Michael Katz, Manager

STERLING AMERICAN ADVISORS II L.P.

By: Sterling Advisors II Corp., a general partner


By: Michael Katz, Executive Vice President

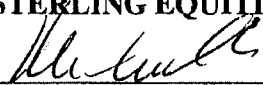
STERLING BRUNSWICK SEVEN L.L.C.


By: Michael Katz, Manager

STERLING DIST PROPERTIES LLC


By: Michael Katz, Manager

STERLING EQUITIES


By: Michael Katz, Senior Executive Vice
Preseident

STERLING EQUITIES ASSOCIATES


By: Michael Katz, Partner

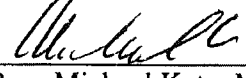
STERLING INTERNAL V LLC


By: Michael Katz, Managing Member

STERLING THIRTY VENTURE LLC


By: Michael Katz, Manager

STERLING TRACING LLC


By: Michael Katz, Manager

STERLING TWENTY FIVE LLC


By: Michael Katz, Manager

STERLING VC IV LLC


By: Michael Katz, Manager


STERLING VC V LLC


By: Michael Katz, Manager

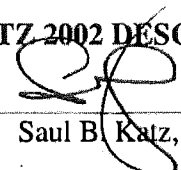
SAUL B. KATZ FAMILY TRUST


By: Michael Katz, Trustee

FRED WILPON FAMILY TRUST


By: Richard Wilpon, Trustee

KATZ 2002 DESCENDANTS' TRUST


By: Saul B. Katz, Trustee

WILPON 2002 DESCENDANTS' TRUST


By: Fred Wilpon, Trustee

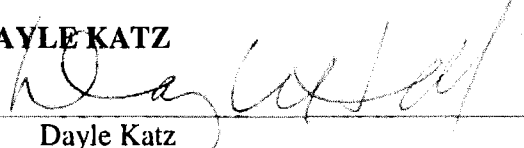
IRIS KATZ

Iris Katz

JUDITH WILPON

Judith Wilpon

DAYLE KATZ



Dayle Katz

DEBRA WILPON

Debra Wilpon

FRED WILPON FAMILY TRUST

By: Richard Wilpon, Trustee

KATZ 2002 DESCENDANTS' TRUST

By: Saul B. Katz, Trustee

WILPON 2002 DESCENDANTS' TRUST

By: Fred Wilpon, Trustee

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Iris Katz

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By: Fred Wilpon, Trustee

IRIS KATZ

Iris Katz

JUDITH WILPON

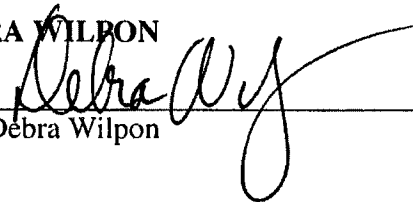
Judith Wilpon

DAYLE KATZ


Dayle Katz

DEBRA WILPON

Debra Wilpon

A handwritten signature in black ink, appearing to read 'Debra Wilpon', is written over a horizontal line. The signature is fluid and cursive.

VALERIE WILPON



Valerie Wilpon

AMY BETH KATZ

Amy Beth Katz

HEATHER KATZ KNOPF

Heather Katz Knopf

HOWARD KATZ

Howard Katz

NATALIE KATZ O'BRIEN

Natalie Katz O'Brien

TODD KATZ

Todd Katz

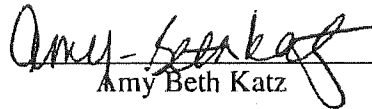
BRUCE N. WILPON

Bruce N. Wilpon

VALERIE WILPON

Valerie Wilpon

AMY BETH KATZ


Amy Beth Katz

HEATHER KATZ KNOPF

Heather Katz Knopf

HOWARD KATZ

Howard Katz

NATALIE KATZ O'BRIEN

Natalie Katz O'Brien

TODD KATZ

Todd Katz

BRUCE N. WILPON

Bruce N. Wilpon

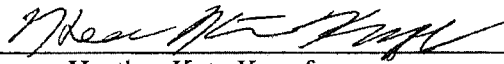
VALERIE WILPON

Valerie Wilpon

AMY BETH KATZ

Amy Beth Katz

HEATHER KATZ KNOFF

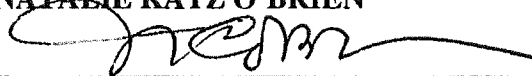


Heather Katz Knopf

HOWARD KATZ

Howard Katz

NATALIE KATZ O'BRIEN



Natalie Katz O'Brien

TODD KATZ

Todd Katz

BRUCE N. WILPON

Bruce N. Wilpon

VALERIE WILPON

Valerie Wilpon

AMY BETH KATZ

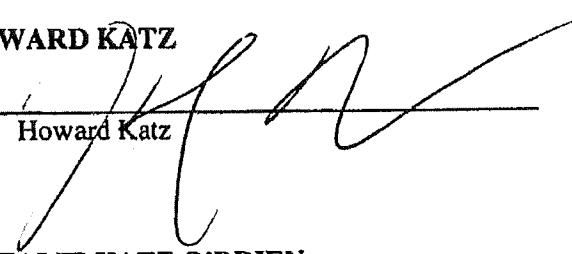
Amy Beth Katz

HEATHER KATZ KNOFF

Heather Katz Knopf

HOWARD KATZ

Howard Katz



NATALIE KATZ O'BRIEN

Natalie Katz O'Brien

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Todd Katz

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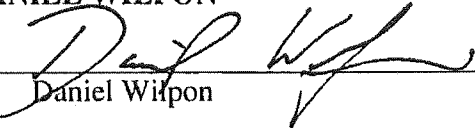
TODD KATZ

Todd Katz


BRUCE N. WILPON


Bruce N. Wilpon

DANIEL WILPON


Daniel Wilpon

JESSICA WILPON KAMEL


Jessica Wilpon Kamel

ROBIN WILPON WACHTLER

Robin Wilpon Wachtler

PHILIP WACHTLER

Philip Wachtler

SCOTT WILPON

Scott Wilpon

RUTH FRIEDMAN

Ruth Friedman

PHYLLIS REBELL OSTERMAN

Phyllis Rebell Osterman

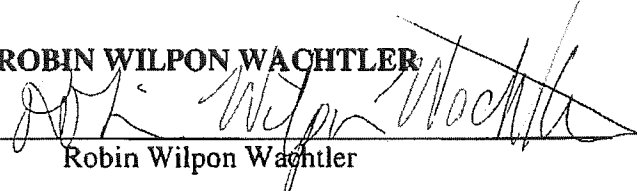
DANIEL WILPON

Daniel Wilpon

JESSICA WILPON KAMEL

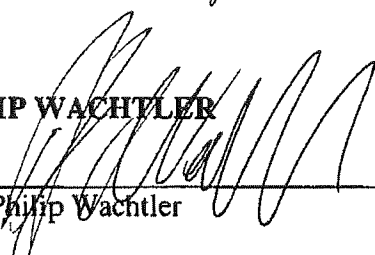
Jessica Wilpon Kamel

ROBIN WILPON WACHTLER



Robin Wilpon Wachtler

PHILIP WACHTLER



Philip Wachtler

SCOTT WILPON

Scott Wilpon

RUTH FRIEDMAN

Ruth Friedman

PHYLLIS REBELL OSTERMAN

Phyllis Rebell Osterman

DANIEL WILPON

Daniel Wilpon

JESSICA WILPON KAMEL

Jessica Wilpon Kamel

ROBIN WILPON WACHTLER

Robin Wilpon Wachtler

PHILIP WACHTLER

Philip Wachtler

SCOTT WILPON

Scott Wilpon

RUTH FRIEDMAN

Ruth Friedman

PHYLLIS REBELL OSTERMAN

Phyllis Rebell Osterman

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Daniel Wilpon

JESSICA WILPON KAMEL

Jessica Wilpon Kamel

ROBIN WILPON WACHTLER

Robin Wilpon Wachtler

PHILIP WACHTLER

Philip Wachtler

SCOTT WILPON

Scott Wilpon

RUTH FRIEDMAN


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PHILIP WACHTLER

Philip Wachtler

SCOTT WILPON

Scott Wilpon

RUTH FRIEDMAN

Ruth Friedman

PHYLLIS REBELL OSTERMAN

Phyllis Rebell Osterman
Phyllis Rebell Osterman

ELISE C. TEPPER



Elise C. Tepper

JACQUELINE G. TEPPER

Jacqueline G. Tepper

EDWARD M. TEPPER

Edward M. Tepper

DEVYA SCHREIER ARTHUR

Devya Schreier Arthur

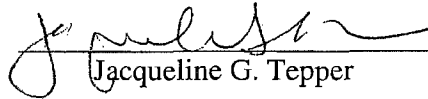
STERLING ACQUISITIONS LLC

By: Michael Katz, Member

ELISE C. TEPPER

Elise C. Tepper

JACQUELINE G. TEPPER



Jacqueline G. Tepper

EDWARD M. TEPPER

Edward M. Tepper

DEVYA SCHREIER ARTHUR

Devya Schreier Arthur

STERLING ACQUISITIONS LLC

By: Michael Katz, Member

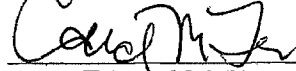
ELISE C. TEPPER

Elise C. Tepper

JACQUELINE G. TEPPER

Jacqueline G. Tepper

EDWARD M. TEPPER



Edward M. Tepper

DEVYA SCHREIER ARTHUR

Devya Schreier Arthur

STERLING ACQUISITIONS LLC

By: Michael Katz, Member

ELISE C. TEPPER

Elise C. Tepper

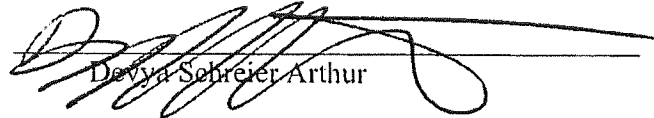
JACQUELINE G. TEPPER

Jacqueline G. Tepper

EDWARD M. TEPPER

Edward M. Tepper

DEVYA SCHREIER ARTHUR



Devya Schreier Arthur

STERLING ACQUISITIONS LLC

By: Michael Katz, Member

ELISE C. TEPPER

Elise C. Tepper

JACQUELINE G. TEPPER

Jacqueline G. Tepper

EDWARD M. TEPPER

Edward M. Tepper

DEVYA SCHREIER ARTHUR

Devya Schreier Arthur

STERLING ACQUISITIONS LLC


By: Michael Katz, Member

STERLING AMERICAN PROPERTY V L.P.

By: Sterling American Advisors V LLC, its
general partner

By: Sterling Advisors V LLC, its managing
member

By: Sterling SAP V Equity Partners
LLC, its managing member



By: Michael Katz, Co-CEO

STERLING METS ASSOCIATES



By: Michael Katz, Partner

STERLING METS ASSOCIATES II



By: Michael Katz, Partner

METS ONE LLC

By: Sterling Mets Associates, its member



By: Michael Katz, Partner

METS PARTNERS, INC.

By: David P. Cohen, Executive Vice President

STERLING AMERICAN PROPERTY V L.P.

By: Sterling American Advisors V LLC, its
general partner

By: Sterling Advisors V LLC, its managing
member

By: Sterling SAP V Equity Partners
LLC, its managing member

By: Michael Katz, Co-CEO

STERLING METS ASSOCIATES

By: Michael Katz, Partner

STERLING METS ASSOCIATES II

By: Michael Katz, Partner

METS ONE LLC

By: Sterling Mets Associates, its member

By: Michael Katz, Partner

METS PARTNERS, INC.



By: David P. Cohen, Executive Vice President

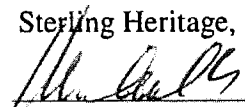
C.D.S. CORP.


By: Fred Wilpon, CEO

**CONEY ISLAND BASEBALL HOLDING
COMPANY, L.L.C.**

By: FS Company, L.L.C., its managing member

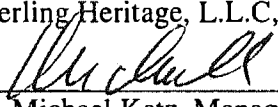
By: Sterling Heritage, L.L.C., its member


By: Michael Katz, Managing Member

BROOKLYN BASEBALL COMPANY L.L.C.

By: FS Company, L.L.C., its managing member

By: Sterling Heritage, L.L.C., its member


By: Michael Katz, Managing Member

157 J.E.S. LLC


By: Michael Katz, Manager

AIR STERLING LLC

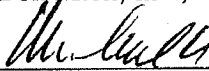

By: Michael Katz, Manager

BAS AIRCRAFT LLC


By: Richard Wilpon, Manager

BON-MICK FAMILY PARTNERS, L.P.

By: Bon Mick, Inc., its general partner


By: Michael Katz, Vice President

CHARLES 15 ASSOCIATES

By: Charles 15 LLC, a general partner

By: Charles Sterling 15 LLC, its manager


By: Michael Katz, Manager

CHARLES 15 LLC

By: Charles Sterling 15 LLC, its manager


By: Michael Katz, Manager

CHARLES STERLING LLC


By: Charles Sterling 15 LLC, its manager


By: Michael Katz, Manager

RUSKIN GARDEN APARTMENTS LLC


By: Saul B. Katz, Managing Member

BON-MICK, INC.



By: Michael Katz, Vice President

SEE HOLDINGS I



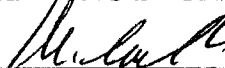
By: Michael Katz, Partner

SEE HOLDINGS II



By: Saul B. Katz, Partner

STERLING BRUNSWICK CORPORATION



By: Michael Katz, Manager

STERLING EQUITIES INVESTORS



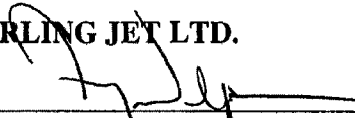
By: Michael Katz, Partner

STERLING HERITAGE, L.L.C.



By: Michael Katz, Managing Member

STERLING JET LTD.



By: Fred Wilpon, President

STERLING JET II, LTD.



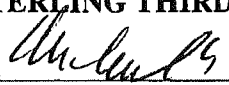
By: Saul B. Katz, President

STERLING PATHOGENESIS COMPANY



By: Michael Katz, Partner

STERLING THIRD ASSOCIATES



By: Michael Katz, Partner

VALLEY HARBOR ASSOCIATES

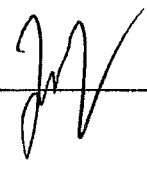


By: Saul E. Katz, Partner

KIMBERLY WACHTLER

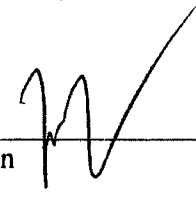
Kimberly Wachtler

MINOR 1



By: Jeffrey Wilpon

MINOR 2



By: Jeffrey Wilpon

MICHAEL SCHREIER

Michael Schreier

STERLING PATHOGENESIS COMPANY

By: Michael Katz, Partner

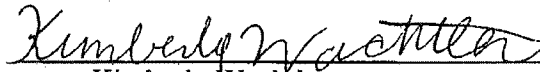
STERLING THIRD ASSOCIATES

By: Michael Katz, Partner

VALLEY HARBOR ASSOCIATES

By: Saul B. Katz, Partner

KIMBERLY WACHTLER



Kimberly Wachler

MINOR 1

By: Jeffrey Wilpon

MINOR 2

By: Jeffrey Wilpon

MICHAEL SCHREIER

Michael Schreier

STERLING PATHOGENESIS COMPANY

By: Michael Katz, Partner

STERLING THIRD ASSOCIATES

By: Michael Katz, Partner

VALLEY HARBOR ASSOCIATES

By: Saul B. Katz, Partner

KIMBERLY WACHTLER

Kimberly Wachtler

MINOR 1

By: Jeffrey Wilpon

MINOR 2

By: Jeffrey Wilpon

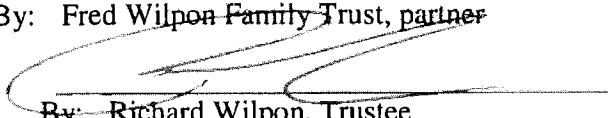
MICHAEL SCHREIER



Michael Schreier

REALTY ASSOCIATES MADOFF II


By: Fred Wilpon Family Trust, partner


By: Richard Wilpon, Trustee

**STERLING AMERICAN PROPERTY III
L.P.**

By: Sterling American Advisors III LLC, a
general partner


By: Sterling Advisors III LLC, a managing
member


By: Michael Katz, Executive Vice
President

**STERLING AMERICAN PROPERTY IV
L.P.**

By: Sterling American Advisors IV LLC, a
general partner

By: Sterling Advisors IV LLC, a managing
member

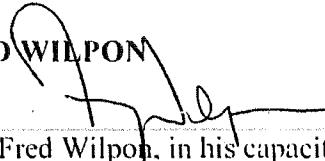

By: Michael Katz, Senior Executive Vice
President

SAUL B. KATZ



Saul B. Katz, in his capacity as Guarantor
as defined herein

FRED WILPON



Fred Wilpon, in his capacity as Guarantor
as defined herein

Schedule 1

Summary of Allowed Net Equity Claims Against the BLMIS Estate
April 13, 2012

| Totals | 56 | | | \$177,563,039.08 | |
|---------|--------------------------------|-------------------------------|-----------------------|------------------|--------------|
| Account | Line 1 | Line 2 | Line 3 | Net Equity | Claim Number |
| 1KW001 | BON MICK FAMILY PARTNERS L P | | | \$32,040.00 | 009928 |
| 1KW013 | DAYLE KATZ | | | \$380,435.00 | 009930 |
| 1KW019 | MICHAEL KATZ | | | \$306,936.04 | 009932 |
| 1KW061 | ELISE C TEPPER | | | \$1,779,065.42 | 009937 |
| 1KW076 | JEFFREY S WILPON | & VALERIE WILPON JT TENANTS | | \$3,104,689.36 | 009939 |
| 1KW108 | GREGORY KATZ | | | \$178,937.89 | 009947 |
| 1KW109 | HOWARD KATZ | MICHAEL KATZ AS CUSTODIAN | | \$48,125.00 | 009948 |
| 1KW110 | TODD KATZ | MICHAEL KATZ AS CUSTODIAN | | \$34,073.00 | 009949 |
| 1KW206 | THE WILPON FAMILY 1997 | DESCENDANT'S TRUST | C/O STERLING EQUITIES | \$220,000.00 | 009909 |
| 1KW209 | DANIEL WILPON | RICHARD A WILPON AS CUSTODIAN | | \$282,659.14 | 009910 |
| 1KW242 | SAUL B KATZ FAMILY TRUST | | | \$4,875,617.50 | 009913 |
| 1KW248 | DAYLE H & MICHAEL KATZ | FOUNDATION INC | | \$617,000.00 | 009916 |
| 1KW260 | FRED WILPON FAMILY TRUST | | | \$678,485.79 | 009920 |
| 1KW263 | MARVIN B TEPPER | | | \$440,800.00 | 009921 |
| 1KW275 | L THOMAS OSTERMAN 1999 TRUST | | | \$15,720.00 | 009923 |
| 1KW276 | PATRICIA THACKRAY 1999 TRUST | | | \$21,220.00 | 009924 |
| 1KW302 | RUTH FRIEDMAN | | | \$72,444.27 | 009902 |
| 1KW303 | ELISE TEPPER AS CUSTODIAN | FOR GRANDCHILDREN | | \$144,365.50 | 009903 |
| 1KW305 | VALERIE AND JEFFREY S WILPON | FOUNDATION | | \$70,050.00 | 009905 |
| 1KW309 | DAN KNOPF | HEATHER KNOPF JT TEN | C/O STERLING EQUITIES | \$198,000.00 | 009898 |
| 1KW313 | STERLING THIRTY VENTURE LLC | TR | | \$8,068,675.34 | 009897 |
| 1KW319 | THE TEPPER FAMILY FOUNDATION | | | \$30,895.00 | 009894 |
| 1KW320 | THE DEBRA & RICHARD A WILPON | FOUNDATION | | \$18,550.00 | 009887 |
| 1KW321 | THE PHYLLIS & THOMAS OSTERMAN | FAMILY FOUNDATION | | \$92,500.00 | 009888 |
| 1KW330 | THE RUTH AND ARTHUR FRIEDMAN | FAMILY FOUNDATION | | \$65,000.00 | 009889 |
| 1KW346 | ROBBINSVILLE PARK LLC | | | \$239,000.00 | 009893 |
| 1KW347 | FS COMPANY LLC | | | \$5,627,711.66 | 009886 |
| 1KW367 | ROBIN WACHTLER | & PHILIP WACHTLER JT/WROS | | \$667,000.00 | 009883 |
| 1KW374 | METS II LLC | | | \$3,556,888.64 | 009881 |
| 1KW384 | L THOMAS OSTERMAN | AND JILL PUPKE TIC | | \$136,911.09 | 009879 |
| 1KW389 | SCOTT WILPON 2000 TRUST | RICHARD WILPON TRUSTEE | | \$257,818.37 | 009878 |
| 1KW390 | JESSICA WILPON 2000 TRUST | RICHARD WILPON TRUSTEE | | \$245,711.87 | 009877 |
| 1KW391 | KATZ 2002 DESCENDANTS TRUST | | | \$70,500.00 | 009876 |
| 1KW396 | DEYVA ARTHUR | | | \$306,000.00 | 009875 |
| 1KW402 | STERLING 10 LLC | STERLING EQUITIES | | \$7,153,758.31 | 009872 |
| 1KW403 | RICHARD A WILPON | ANITA M TAPPY T.I.C | | \$27,728.27 | 009870 |
| 1KW413 | CHARLES STERLING SUB LLC | (PRIMARY) | | \$10,957,335.92 | 009871 |
| 1KW414 | CHARLES STERLING SUB LLC | (INTEREST) | | \$5,302,466.42 | 009869 |
| 1KW420 | STERLING BRUNSWICK SEVEN LLC | | | \$8,234,000.00 | 009868 |
| 1KW424 | HOWARD S KATZ | | C/O STERLING EQUITIES | \$415,057.00 | 009866 |
| 1KW426 | GREGORY A KATZ | & AMY BETH KATZ JT/WROS | | \$320,000.00 | 009865 |
| 1KW435 | STERLING INTERNAL V LLC | | C/O STERLING EQUITIES | \$18,034,620.00 | 009863 |
| 1KW437 | STERLING ADVISORS IV LLC | | | \$4,731,932.76 | 009862 |
| 1KW445 | WILPON 2002 DESCENDANT'S TRUST | | | \$462,500.00 | 009861 |
| 1KW446 | THE THOMAS OSTERMAN FAMILY | 2006 GRANTOR TRUST | | \$96,572.45 | 009860 |
| 1KW447 | STERLING TWENTY FIVE LLC | | | \$36,728,168.21 | 009859 |
| 1KW455 | STERLING TRACING LLC | STERLING EQUITIES | ARTHUR FRIEDMAN | \$24,523,164.00 | 009857 |
| 1KW457 | JACQUELINE TEPPER | | | \$260,747.02 | 009856 |
| 1KW458 | NATALIE KATZ O'BRIEN | AND BRENDAN O'BRIEN JT WROS | | \$570,000.00 | 009855 |
| 1KW460 | BRADOO-MOOMOO LLC | | C/O STERLING EQUITIES | \$189,252.84 | 009854 |
| 1KW463 | STERLING VC IV LLC | STERLING EQUITIES | ATTN: ARTHUR FRIEDMAN | \$1,933,625.00 | 009853 |
| 1KW464 | STERLING VC V LLC | STERLING EQUITIES | ATTN: ARTHUR FRIEDMAN | \$11,803,944.00 | 009852 |
| 1KW465 | STERLING DIST PROPERTIES LLC | STERLING EQUITIES | ATTN: ARTHUR FRIEDMAN | \$1,657,361.00 | 009851 |
| 1KW466 | COLLEGE PLACE ENTERPRISES LLC | | C/O STERLING EQUITIES | \$2,960,000.00 | 009850 |
| 1KW467 | RV-RJW LLC | C/O STERLING EQUITIES | | \$7,316,980.00 | 009849 |
| 1W0141 | JEFFREY S WILPON | & VALERIE WILPON JT/WROS | | \$1,000,000.00 | 009847 |

Schedule 2

Summary of Six-Year Transfers from BLMIS to Defendants in Excess of Principal
 April 13, 2012

| Column 1 | Column 2 | Column 3 | Column 4 | Column 5 | Column 6 |
|---|--------------|--|------------------|---------------------|---------------------------------------|
| Defendant(s) | BLMIS Acct # | BLMIS Account Name | Total by Account | Proportionate Share | Proportionate Share - JT/TIC Accounts |
| Arthur Friedman | 1KW004 | ARTHUR FRIEDMAN & RUTH FRIEDMAN J/T WROS | \$ 80,437 | 0.04943% | 0.02472% |
| Ruth Friedman | | | | | 0.02472% |
| Iris Katz | 1KW014 | IRIS J KATZ C/O STERLING EQUITIES | \$ 22,464,687 | 13.80516% | |
| Iris J. Katz and Saul B. Katz Family Foundation, Inc. | 1KW016 | IRIS & SAUL KATZ FAM FDN INC AND JUDY & FRED WILPON FAMILY FDN INC TIC | \$ 354,000 | 0.21754% | 0.10877% |
| Judy and Fred Wilpon Family Foundation, Inc. | | | | | 0.10877% |
| Dayle Katz | 1KW020 | MICHAEL KATZ & DAYLE KATZ J/T WROS | \$ 553,483 | 0.34013% | 0.17007% |
| Michael Katz | | | | | 0.17007% |
| Saul B. Katz | 1KW024 | SAUL B KATZ | \$ 7,108,639 | 4.36845% | |
| L. Thomas Osterman | 1KW044 | L THOMAS OSTERMAN | \$ 1,321,950 | 0.81237% | |
| Fred Wilpon | 1KW067 | FRED WILPON | \$ 1,680,520 | 1.03272% | |
| Judith Wilpon | 1KW077 | JUDITH A WILPON C/O STERLING EQUITIES | \$ 11,708,302 | 7.19507% | |
| Debra Wilpon | 1KW081 | RICHARD A WILPON & DEBRA WILPON J/T WROS | \$ 1,131,467 | 0.69532% | 0.34766% |
| Richard Wilpon | | | | | 0.34766% |
| Iris J. Katz and Saul B. Katz Family Foundation, Inc. | 1KW083 | IRIS KATZ & SAUL KATZ FAMILY FOUNDATION | \$ 592,738 | 0.36425% | |
| College Place Enterprises LLC | 1KW084 | COLLEGE PLACE ENTERPRISES PROFIT SHARING | \$ 5,492,275 | 3.37515% | |
| Judy and Fred Wilpon Family Foundation, Inc. | 1KW086 | JUDY WILPON & FRED WILPON FAM FDN INC | \$ 2,011,180 | 1.23592% | |
| Philip Wachtler | 1KW096 | PHILIP H WACHTLER AND ROBIN WILPON WACHTLER J/T WROS | \$ 18,032 | 0.01108% | 0.00554% |
| Robin Wilpon Wachtler | | | | | 0.00554% |
| Bruce N. Wilpon | 1KW118 | BRUCE WILPON | \$ 236,770 | 0.14550% | |
| Michael Katz | 1KW121 | MICHAEL KATZ & SAUL B KATZ TIC | \$ 99,000 | 0.06084% | 0.03042% |
| Saul B. Katz | | | | | 0.03042% |
| Iris Katz | 1KW154 | IRIS J KATZ C/O STERLING EQUITIES | \$ 258,080 | 0.15860% | |
| Judith Wilpon | 1KW155 | JUDITH A WILPON C/O STERLING EQUITIES | \$ 1,110,000 | 0.68213% | |
| Sterling 15C LLC | 1KW156 | STERLING 15C LLC | \$ 17,329,002 | 10.64914% | |
| Mets Limited Partnership | 1KW192 | METS LIMITED PTR SPECIAL ATTN: LEN LABITA | \$ 24,550,000 | 15.08664% | |
| Red Valley Partners | 1KW198 | RED VALLEY PARTNERS | \$ 233,000 | 0.14318% | |
| David Katz | 1KW201 | DAVID M KATZ | \$ 585,402 | 0.35975% | |
| Saul B. Katz | 1KW238 | SAUL B KATZ - PM | \$ 1,502,544 | 0.92335% | |
| Mets Limited Partnership | 1KW247 | METS LIMITED PTR #2 ATTN LEN LABITA | \$ 20,270,108 | 12.45653% | |
| Iris J. Katz and Saul B. Katz Family Foundation, Inc. | 1KW252 | IRIS AND SAUL KATZ FAMILY FOUNDATION PM | \$ 1,437,799 | 0.88357% | |
| Sterling Mets LP | 1KW254 | STERLING METS LP-FUNDING ACCT PLYRS DEF SLRY OBL | \$ 1,670,711 | 1.02670% | |
| Phyllis Rebell Osterman | 1KW269 | PHYLLIS REBELL OSTERMAN | \$ 107,000 | 0.06575% | |
| Saul B. Katz | 1KW278 | SAUL B KATZ JI | \$ 212,069 | 0.13032% | |
| Sterling Brunswick Corporation | 1KW279 | STERLING BRUNSWICK CORP | \$ 3,020 | 0.00186% | |
| Sterling Heritage LLC | 1KW287 | STERLING HERITAGE LLC | \$ 24,325 | 0.01495% | |
| Fred Wilpon Family Trust | 1KW298 | FRED WILPON FAMILY TRUST TR | \$ 1,156,806 | 0.71089% | |
| Saul B. Katz Family Trust | 1KW299 | SAUL B KATZ TR | \$ 421,762 | 0.25918% | |
| Sterling Equities Associates | 1KW300 | STERLING EQUITIES | \$ 800,000 | 0.49162% | |
| Debra Wilpon | 1KW307 | DEBRA WILPON | \$ 75,600 | 0.04646% | |
| Edward M. Tepper | | | | | 0.07439% |
| Elise C. Tepper | 1KW308 | EDWARD TEPPER JACQUELINE TEPPER ELISE TEPPER TIC | \$ 363,170 | 0.22318% | 0.07439% |
| Jacqueline G. Tepper | | | | | 0.07439% |
| Sterling Thirty Venture LLC | 1KW314 | STERLING THIRTY VENTURE LLC B | \$ 3,348,352 | 2.05765% | |
| Sterling Thirty Venture LLC | 1KW315 | STERLING THIRTY VENTURE, LLC | \$ 211,249 | 0.12982% | |
| Marvin B. Tepper | 1KW322 | MARVIN B TEPPER DEFINED BENEFIT PLAN | \$ 387,830 | 0.23833% | |
| Brooklyn Baseball Company LLC | 1KW323 | BROOKLYN BASEBALL COMPANY | \$ 329,354 | 0.20240% | |
| BAS Aircraft LLC | 1KW325 | BAS AIRCRAFT LLC | \$ 4,919 | 0.00302% | |
| Fred Wilpon | 1KW329 | FRED WILPON SAUL B KATZ TIC TAX ESCROW | \$ 970,109 | 0.59616% | 0.29808% |
| Saul B. Katz | | | | | 0.29808% |
| Edward M. Tepper | 1KW332 | EDWARD TEPPER | \$ 206,346 | 0.12681% | |
| Saul B. Katz | 1KW336 | SAUL B KATZ BRIAN HAHN JR TIC | \$ 60,000 | 0.03687% | 0.03687% |
| Amy Beth Katz | | | | | 0.01243% |
| Gregory Katz | 1KW345 | GREG KATZ AMY KATZ JT TEN MICHAEL KATZ TIC | \$ 86,700 | 0.05328% | 0.01243% |
| Michael Katz | | | | | 0.02842% |
| 157 J.E.S. LLC | 1KW348 | 157 J.E.S. LLC | \$ 389,682 | 0.23947% | |
| Coney Island Baseball Holding Company LLC | 1KW349 | CONEY ISLAND BASEBALL HOLDING CO LLC | \$ 29,426 | 0.01808% | |
| Michael Katz | 1KW354 | MICHAEL KATZ-SEF | \$ 108,243 | 0.06652% | |
| Sterling 20 LLC | 1KW358 | STERLING 20 LLC | \$ 181,023 | 0.11124% | |
| Sterling Equities | 1KW359 | STERLING EQUITIES (GREENWOOD) C/O MATTHEW BERNSTEIN MS# NYC034091 | \$ 38,499 | 0.02366% | |
| Saul B. Katz | 1KW363 | SAUL B KATZ PAWLING REFINANCINC | \$ 59,061 | 0.03629% | |
| L. Thomas Osterman | 1KW365 | L THOMAS OSTERMAN TRACING | \$ 12,302 | 0.00756% | |
| Marvin B. Tepper | 1KW366 | MARVIN B TEPPER TRACING | \$ 27,007 | 0.01660% | |
| Estate of Leonard Schreier | 1KW372 | ESTATE OF LEONARD J SCHREIER C/O SCHULTE ROTH & ZABEL KIM BAPTISTE ESQ | \$ 263,836 | 0.16213% | |
| Saul B. Katz | 1KW376 | VICKY SCHULTZ SAUL B KATZ TIC | \$ 60,796 | 0.03736% | 0.03736% |
| Sterling Mets LP | 1KW378 | STERLING METS (INSURANCE FUND) | \$ 350,000 | 0.21508% | |
| Arthur Friedman | 1KW388 | ARTHUR FRIEDMAN ET AL TIC | \$ 45,153 | 0.02775% | 0.02775% |
| Fred Wilpon | 1KW392 | FRED WILPON - APT TRACING | \$ 10,495 | 0.00645% | |
| Saul B. Katz Family Trust | 1KW407 | SAUL B KATZ FAMILY TRUST 2 C/O STERLING EQUITIES | \$ 33,000 | 0.02028% | |

Schedule 2

Summary of Six-Year Transfers from BLMIS to Defendants in Excess of Principal
April 13, 2012

| Column 1 | Column 2 | Column 3 | Column 4 | Column 5 | Column 6 |
|---|-----------------|---|---------------------|------------------------|---|
| Defendant(s) | BLMIS Acct # | BLMIS Account Name | Total by Account | Proportionate Share | Proportionate Share - JT/TIC Accounts |
| Fred Wilpon Family Trust | 1KW408 | FRED WILPON FAMILY TRUST 2 C/O STERLING EQUITIES | \$ 159,778 | 0.09819% | |
| Arthur Friedman | 1KW412 | DAVID KATZ ET AL TIC | \$ 13,244,256 | 8.13895% | 0.03988% |
| David Katz | | | | | 0.10011% |
| Estate of Leonard Schreier | | | | | 0.15627% |
| Fred Wilpon | | | | | 1.43815% |
| Fred Wilpon Family Trust | | | | | 1.73197% |
| Jeffrey Wilpon | | | | | 0.48834% |
| Katz 2002 Descendants' Trust | | | | | 0.24335% |
| L. Thomas Osterman | | | | | 0.16929% |
| Marvin B. Tepper | | | | | 0.33207% |
| Michael Katz | | | | | 0.23359% |
| Richard Wilpon | | | | | 0.31172% |
| Saul B. Katz | | | | | 0.97423% |
| Saul B. Katz Family Trust | | | | | 1.59523% |
| Wilpon 2002 Descendants' Trust | | | | | 0.32474% |
| Mets Limited Partnership | 1KW423 | METS LIMITED PARTNERSHIP SHEA STADIUM | \$ 9,101,837 | 5.59333% | |
| Arthur Friedman | 1KW427 | SAUL B KATZ ET AL TIC | \$ 5,690,849 | 3.49718% | 0.03487% |
| David Katz | | | | | 0.24047% |
| Elise C. Tepper | | | | | 0.03973% |
| Estate of Leonard Schreier | | | | | 0.04997% |
| Fred Wilpon | | | | | 0.38640% |
| Fred Wilpon Family Trust | | | | | 0.79480% |
| Gregory Katz | | | | | 0.02941% |
| Iris J. Katz and Saul B. Katz Family Foundation, Inc. | | | | | 0.22256% |
| Jeffrey Wilpon | | | | | 0.07358% |
| L. Thomas Osterman | | | | | 0.04942% |
| Marvin B. Tepper | | | | | 0.16930% |
| Michael Katz | | | | | 0.10135% |
| Red Valley Partners | | | | | 0.04371% |
| Richard Wilpon | | | | | 0.16636% |
| Saul B. Katz | | | | | 0.30044% |
| Saul B. Katz Family Trust | | | | | 0.79480% |
| FFB Aviation LLC | 1KW434 | FFB AVIATION LLC C/O STERLING EQUITIES | \$ 112,975 | 0.06943% | |
| Sterling American Advisors II LP | 1KW436 | STERLING AMERICAN ADVISORS II LP | \$ 177,415 | 0.10903% | |
| SEE Holdco LLC | 1KW449 | SEE HOLDCO LLC | \$ 60,000 | 0.03687% | |
| Gregory Katz | 1KW453 | GREG KATZ (TR) C/O STERLING EQUITIES | \$ 2,398 | 0.00147% | |
| | | | \$ 162,726,768 | 100.00000% | |

EXHIBIT A

ASSIGNMENT OF DEFENDANT NET EQUITY CLAIMS

The undersigned, _____ (the "Assignor"), a party to the Settlement Agreement and Release (the "Settlement Agreement") approved by the District Court for the Southern District of New York on May __, 2012, which resolved *Picard v. Katz, et al.*, 11-CV-03605 (JSR) and which became effective on May __ 2012, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, does hereby absolutely, unconditionally and irrevocably transfer and assign, to Irving H. Picard, as trustee (the "Trustee") for the liquidation proceedings under the Securities Investor Protection Act, 15 U.S.C. §§ 78aaa *et seq.*, of Bernard L. Madoff Investment Securities LLC ("BLMIS"), all right, title and interest in and to the Assignor's Defendant Net Equity Claim[s] (as such term is defined in the Settlement Agreement); provided that the Trustee's rights with respect to the Assignor's Defendant Net Equity Claims assigned hereby are set forth in the Settlement Agreement, the terms of which are incorporated herein by reference as if restated herein in full.

IN WITNESS WHEREOF, dated the __ day of April, 2012.

Assignor:

Trustee:

EXHIBIT C

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

| | |
|--|------------------------------|
| In re: | Adv. Pro. No. 08-01789 (BRL) |
| BERNARD L. MADOFF INVESTMENT SECURITIES LLC, | SIPA LIQUIDATION |
| Debtor. | (Substantively Consolidated) |
| IRVING H. PICARD, Trustee for the Liquidation of Bernard L. Madoff Investment Securities LLC, | Adv. Pro. No. 10-05287 (BRL) |
| Plaintiff, | 11-Civ.-03605 (JSR)(HBP) |
| v. | |
| SAUL B. KATZ, et al., | |
| Defendants. | |

**ORDER PURSUANT TO 11 U.S.C. § 105(a) AND FEDERAL RULE OF BANKRUPTCY
PROCEDURE 9019(a) APPROVING THE SETTLEMENT AGREEMENT**

Upon the motion and memorandum (the “Motion”) of Irving H. Picard (the “Trustee”), as trustee for the liquidation of Bernard L. Madoff Investment Securities LLC under the Securities Investor Protection Act, 15 U.S.C. §§78aaa *et seq.*, substantively consolidated with the bankruptcy estate of Bernard L. Madoff, seeking entry of an order, pursuant to 11 U.S. C. § 105(a) and Rules 2002 and 9019(a) of the Federal Rules of Bankruptcy Procedure (“Bankruptcy Rules”), approving the settlement and compromise by and among the Trustee and the Defendants; and it appearing that the relief requested by the Motion is necessary and in the best interests of the customers of BLMIS, the estate and all parties in interest; and it appearing that due and sufficient notice has been given to all parties in interest as required by Bankruptcy Rules 2002 and 9019, and no other or further notice is necessary; and the Court having considered the supporting affidavit of the Trustee and the supporting Declaration of Mario M. Cuomo; and the Court having found and determined that the legal and factual bases set forth in

the Motion establish just cause for the relief granted herein; and after due deliberation, it is hereby ORDERED:

1. The Motion is granted.
2. The Settlement Agreement dated April 13, 2012, entered into by and among the Trustee and the Defendants, which is incorporated herein by reference as if reinstated herein in full, together with any and all schedules, exhibits and ancillary documents referred to in the Settlement Agreement, which are an integral part of the Settlement Agreement (collectively, the "Agreement"), a copy of which is attached to this Order as Exhibit A, is authorized and approved in its entirety.
3. Upon the Effective Date of the Agreement, the Parties are authorized, without the need for further order of this Court, to execute, deliver, implement and fully perform any and all obligations, instruments, documents and papers and to take any and all actions reasonably necessary to consummate the Settlement Agreement.
5. This Order shall be effective and enforceable immediately upon entry.
6. This Court shall retain jurisdiction to hear and determine all matters arising from or related to the Settlement Agreement or this Order.

Date: New York, New York
_____, 2012

JED S. RAKOFF
UNITED STATES DISTRICT JUDGE

EXHIBIT A

Sterling VC IV LLC, Sterling VC V LLC, Saul B. Katz Family Trust, Fred Wilpon Family Trust, Katz 2002 Descendants' Trust, Wilpon 2002 Descendants' Trust, Iris Katz, Judith Wilpon, Dayle Katz, Debra Wilpon, Valerie Wilpon, Amy Beth Katz, Heather Katz Knopf, Howard Katz, Natalie Katz O'Brien, Todd Katz, Bruce N. Wilpon, Daniel Wilpon, Jessica Wilpon, Robin Wilpon Wachtler, Philip Wachtler, Scott Wilpon, Ruth Friedman, Phyllis Rebell Osterman, Elise C. Tepper, Jacqueline G. Tepper, Edward M. Tepper, Devya Schreier Arthur, Sterling Acquisitions LLC, and Sterling American Property V L.P. (collectively the "Remaining Defendants"), and Sterling Mets Associates, Sterling Mets Associates II, Mets One LLC, Mets Partners, Inc., C.D.S. Corp., Coney Island Baseball Holding Company L.L.C., Brooklyn Baseball Company L.L.C., 157 J.E.S. LLC, Air Sterling LLC, BAS Aircraft LLC, Bon-Mick, Inc., Charles 15 Associates, Charles 15 LLC, Charles Sterling LLC, Ruskin Garden Apartments LLC, SEE Holdings I, SEE Holdings II, Sterling Brunswick Corporation, Sterling Equities Investors, Sterling Heritage L.L.C., Sterling Jet Ltd., Sterling Jet II Ltd., Sterling PathoGenesis Company, Sterling Third Associates, Valley Harbor Associates, Kimberly Wachtler, Minor 1, Minor 2, Michael Schreier, Realty Associates Madoff II, Sterling American Property III L.P., and Sterling American Property IV L.P. (collectively the "Dismissed Defendants" and, together with the Remaining Defendants, the "Defendants"). Each of the Trustee and each of the Defendants shall be referred to herein as a "Party" and together as the "Parties."

RECITALS

A. BLMIS and its predecessor were registered broker-dealers with the United States Securities and Exchange Commission (the "Commission") and members of the Securities Investor Protection Corporation ("SIPC");

B. On December 11, 2008, the Commission filed a complaint in the United States District Court for the Southern District of New York (the "District Court") against BLMIS and

Madoff. On December 12, 2008, the District Court entered an order which, among other things, appointed Lee S. Richards, Esq. as receiver (the "Receiver") for the assets of BLMIS (No. 08-CV-10791(LSS));

C. On December 15, 2008, pursuant to section 78eee(a)(4)(A) of SIPA, the Commission consented to a combination of its own action with the application of SIPC. Thereafter, SIPC filed an application in the District Court under section 78eee(a)(3) of SIPA alleging, *inter alia*, that BLMIS was not able to meet its obligations to securities customers as they came due and, accordingly, its customers needed the protections afforded by SIPA. On December 15, 2008, the District Court granted the SIPC application and entered an order under SIPA, which, in pertinent part, appointed the Trustee as the trustee for the liquidation of the business of BLMIS under section 78eee(b)(3) of SIPA, removed the Receiver as the receiver for BLMIS, and removed the case to the United States Bankruptcy Court for the Southern District of New York (the "Bankruptcy Court") under section 78eee(b)(4) of SIPA, where it is currently pending as Case No. 08-01789 (BRL);

D. On April 13, 2009, an involuntary bankruptcy petition under chapter 7 of title 11, United States Code, 11 U.S.C. §§ 101 *et seq.* (the "Bankruptcy Code"), was filed against Madoff. By Order dated June 2, 2009, the Bankruptcy Court substantively consolidated Madoff's estate into the BLMIS estate in the SIPA liquidation proceeding (the BLMIS estate consolidated with Madoff's estate collectively are referred to herein as the "BLMIS Estate");

E. On or about June 18, 2009, certain Defendants filed customer claims in the SIPA liquidation proceeding in connection with their BLMIS accounts, including with respect to accounts in which they had deposited more money than they had withdrawn. The Trustee often refers to such accounts as "net loser" accounts.

F. On March 1, 2010, the Bankruptcy Court issued an opinion affirming the Trustee's calculation of customers' "net equity" claims as the difference between the amounts a customer invested with BLMIS and the amounts that customer withdrew from BLMIS (the "Net Investment Method"). On March 8, 2010, the Bankruptcy Court entered an order implementing its decision and certifying it for immediate appeal to the United States Court of Appeals for the Second Circuit, which on August 16, 2011, upheld the Trustee's use of the Net Investment Method as a proper basis for calculating "net equity" claims in *In re Bernard L. Madoff Inv. Sec. LLC*, 654 F.3d 229 (2d Cir. 2011) ("Second Circuit Net Equity Order"), *petition for cert. filed, Sterling Equities Assoc. v. Picard*, No. 11-968, 2012 WL 396523 (Feb. 3, 2012);

G. On December 7, 2010, the Trustee filed an action in the Bankruptcy Court captioned *Picard v. Katz, et al.*, Adv. Pro. No. 10-5287 (BRL) (the "Action"), and on March 18, 2011, filed an amended complaint (the "Amended Complaint") in the Action, which asserted claims under section 78fff-2(c)(3) of SIPA, sections 544(b), 547(b), 548(a), 550(a) and 551 of the Bankruptcy Code, the New York Debtor and Creditor Law § 270 *et seq.*, and other laws;

H. The Trustee alleged in the Amended Complaint, among other claims, that certain Defendants received avoidable transfers of "fictitious profits" during the six-year period preceding December 11, 2008 in the aggregate amount of One Hundred Sixty-Two Million Seven Hundred Twenty-Six Thousand Seven Hundred Sixty-Eight United States Dollars (\$162,726,768) (the "Alleged Six-Year Profits");

I. Prior to the filing of the Action, the Trustee undertook discovery concerning Defendants and their investments with BLMIS pursuant to Rule 2004 of the Federal Rules of Bankruptcy Procedure ("Rule 2004 Discovery"), during which Defendants, among others, produced documents to the Trustee and provided deposition testimony;

J. On March 20, 2011, Defendants filed a motion in the Bankruptcy Court to dismiss the Amended Complaint or, in the alternative, for summary judgment dismissing the Amended Complaint (the "Motion to Dismiss");

K. On May 26, 2011, Defendants filed a motion pursuant to 28 U.S.C. § 157(d) in the District Court to withdraw the reference of the Action to the Bankruptcy Court;

L. By Order dated July 1, 2011 and ruling on August 19, 2011, the District Court withdrew for all purposes the reference of the Action to the Bankruptcy Court, which included withdrawal of the Motion to Dismiss;

M. By Order dated July 12, 2011 (the "Allocation Order"), the Bankruptcy Court approved the Trustee's initial allocation of property to the customer property fund and authorized the Trustee to make an interim distribution to customers holding allowed "net equity" claims. Pursuant to that Order, on or about October 5, 2011, the Trustee made a first interim distribution to customers holding allowed "net equity" claims as of September 30, 2011, in the approximate amount of 4.602% per dollar of their allowed "net equity" claims. No Defendant held an allowed "net equity" claim as of that date, and, therefore, no Defendant received any portion of the distribution.

N. On September 27, 2011, the District Court issued an Opinion and Order (the "Dismissal Order") denying in part and granting in part the Motion to Dismiss and dismissing all counts of the Amended Complaint except Count 1, which alleged that Defendants received intentional fraudulent transfers pursuant to section 548(a)(1)(A) of the Bankruptcy Code, and Count 11, which sought to equitably subordinate Defendants' claims pursuant to section 510(c) of the Bankruptcy Code;

O. On October 7, 2011, the Trustee filed a motion (the "Certification Motion") seeking certification of the rulings in the Dismissal Order for interlocutory appeal under 28 U.S.C. § 1292(b), or to have the District Court enter final judgment with respect to the dismissed claims under Rule 54(b) of the Federal Rules of Civil Procedure. On January 17, 2012, the District Court issued an Opinion and Order denying the Certification Motion and reinstating Count 9 of the Complaint insofar as it sought to avoid transfers under section 550(a) of the Bankruptcy Code in accordance with the Dismissal Order;

P. Between August 12, 2011 and January 13, 2012, the Parties engaged in discovery under Rules 26 through 34 of the Federal Rules of Civil Procedure, during which Defendants, among others, produced documents to the Trustee and provided deposition testimony;

Q. On January 26, 2012, Defendants filed a motion for summary judgment dismissing all remaining counts of the Amended Complaint, and the Trustee filed a motion for partial summary judgment as to Count 1 of the Amended Complaint insofar as his Count 1 claims sought to avoid an aggregate amount of Eighty Three Million Three Hundred Nine Thousand One Hundred Sixty Two United States Dollars (\$83,309,162) of transfers of "fictitious profits" from BLMIS to Defendants during the two-year period preceding December 11, 2008;

R. On March 5, 2012, the District Court issued an order setting forth the Court's bottom line rulings denying Defendants' motion for summary judgment and granting the Trustee's motion for partial summary judgment while leaving unresolved, although capped at the \$83,309,162 sought by the Trustee, the amount of "fictitious profits" received by Defendants that were subject to avoidance;

S. On March 16, 2012, the Parties executed a legally binding Memorandum of Understanding (the "MOU"), in which they agreed to a final, binding, and legally enforceable

settlement of the Action (the "Settlement"). The Parties agreed to work expeditiously and in good faith to enter into definitive documentation reflecting the terms of the MOU and other terms customary for such agreements;

T. Pursuant to the MOU, the Trustee announced that, upon review of the evidence, he determined that he was no longer pursuing the willful blindness claims asserted against any Defendant; and

U. On March 19, 2012, the District Court reviewed the MOU, which requires, among other things, approval of the Settlement by the District Court and any necessary approval by Defendants' lenders by no later than April 13, 2012.

NOW, THEREFORE, it is hereby **AGREED** by and among the Parties to the Agreement, for the good and valuable consideration set forth herein, the adequacy and sufficiency of which is recognized for all purposes, that:

1. **Definitions.** In addition to the definitions of various terms set forth elsewhere in this Agreement, the following terms shall have the following meanings as used in this Agreement:

(a) "Approval Order" means the order of the District Court approving the terms of this Agreement pursuant to Rule 9019 of the Federal Rules of Bankruptcy Procedure.

(b) "Defendant General Creditor Claim" means any claim, other than a Defendant Net Equity Claim (defined below), asserted by any Defendant, with respect to amounts claimed to be held on account for such Defendant at BLMIS at the time of its bankruptcy, against (i) the BLMIS Estate or (ii) any forfeiture or other fund, established or yet to be established, for the benefit of BLMIS customers. Defendants' rights and the Trustee's

obligations with respect to Defendant General Creditor Claims are set forth in paragraph 2(k) below.

(c) “Defendant Net Equity Claim” means the “net equity” claim of any Defendant in BLMIS’s SIPA liquidation proceeding, which the Trustee has determined in accordance with the Net Investment Method and which will be allowed in the aggregate amount of One Hundred Seventy-Seven Million Five Hundred Sixty-Three Thousand Thirty-Eight United States Dollars and Eight Cents (\$177,563,039.08), regardless of the source of payment in respect of such Claim. A schedule of each Defendant Net Equity Claim reflecting the specific account number, account holder’s name, the net equity in each account, and the claim number that identifies the claim filed by each account holder is attached as Schedule 1 to the Agreement. The Parties acknowledge and agree that if the Net Investment Method for calculating the value of “net equity” claims is found to be incorrect or is otherwise modified, the Trustee will retroactively adjust the calculation of the value of each Defendant Net Equity Claim to reflect the new methodology

(d) “Effective Date” means the date on which the District Court enters the Approval Order. The Parties acknowledge and agree that (i) prior to the Effective Date, the following shall be delivered to the Trustee: (x) an executed Assignment, as defined below, of each Defendant Net Equity Claim; and (y) an executed release (or executed acknowledgement of release) of any lien, interest or encumbrance, held prior to the Assignment by any lender to the Defendants or other third party, on or against any part, or all, of each Defendant Net Equity Claim and/or Assigned Claim Recoveries (as defined below) up to the amount of the Settlement Payment (as defined below) (such release or acknowledgement of release a “Release of Lien”), which shall remain in effect until the Settlement Payment is paid in full, and (ii) on the Effective

Date, the Trustee shall deliver to Defendants an executed stipulation of dismissal to be filed on, or as soon as practicable following, the Effective Date.

2. **Payment Obligation, Claims, and Related Matters.** On the terms and subject to the conditions and limitations set forth in this Agreement, Defendants will pay or cause to be paid to the Trustee an aggregate amount of One Hundred Sixty-Two Million United States Dollars (\$162,000,000) (the "Settlement Payment"). The Settlement Payment will be satisfied during the five, twelve-month periods following the Effective Date (the "Settlement Payment Term"). The first of such twelve-month periods shall be referred to as the "First Period"; the second twelve-month period shall run from the end of the First Period and be referred to as the "Second Period"; and each successive twelve-month Period thereafter shall run from the end of the prior Period through and including the "Fifth Period." The Settlement Payment shall be satisfied by the following means:

(a) Assignment of Defendant Net Equity Claims. Each Defendant unconditionally and irrevocably agrees to assign to the Trustee by written assignment (individually, the "Assignment," and collectively, the "Assignments"), the form of which is attached hereto as Exhibit A, his, her or its Defendant Net Equity Claim (collectively, the "Assigned Claims") solely for the purpose of satisfying the Settlement Payment. No assigned Defendant Net Equity Claim (or recovery in respect of a Defendant Net Equity Claim in excess of amounts necessary to satisfy the Settlement Payment) shall become property of the BLMIS estate nor be used for any purpose other than to satisfy the Settlement Payment. The Trustee shall not transfer or assign any Defendant Net Equity Claim, except as expressly contemplated by this Agreement.

(b) Allowance of Defendant Net Equity Claims. The Trustee will allow the Defendant Net Equity Claims, which will then be entitled to full recovery on the same basis as “good faith” customers of BLMIS, except that Defendant Net Equity Claims will not be entitled to receive an advance from SIPC, as provided for in 15 U.S.C. § 78fff-3.

(c) Assigned Claim Recoveries. The Assigned Claims will be entitled to 100% of all distributions made by the Trustee from BLMIS customer property or any other payment of allowed claims of “good faith” customers of BLMIS from any source (collectively, “Assigned Claim Recoveries”), including, but not limited to, (i) from any forfeiture fund established by the U.S. Department of Justice pursuant to 28 C.F.R. Part 9 and (ii) the 4.602% “catch-up” distribution in the amount of Eight Million One Hundred Seventy-One Thousand Four Hundred Fifty-One United States Dollars (\$8,171,451) made pursuant to the Bankruptcy Court’s Allocation Order but not previously paid in connection with any Defendant Net Equity Claim. The Trustee represents that, as of the Effective Date, there has been only one (1) distribution from the fund of customer property to customers holding allowed “net equity” claims, such distribution occurred on or about October 5, 2011, pursuant to the Bankruptcy Court’s Allocation Order, and was in the amount of 4.602% of customers’ allowed “net equity” claims.

(d) In connection with any distribution made in respect of the Assigned Claims, any and all Assigned Claim Recoveries shall immediately and automatically be applied to reduce Defendants’ obligations in respect of the Settlement Payment on a dollar-for-dollar basis. Promptly thereafter (but not later than seven (7) calendar days), the Trustee shall provide written notice to Defendants (i) of any remaining balance of the Settlement Payment after

Assigned Claim Recoveries have been so applied and (ii) if/when the Settlement Payment is fully satisfied.

(e) During the First through the Third Periods of the Settlement Payment Term, Defendants' payment obligations pursuant to this Agreement are limited solely to Assigned Claim Recoveries, and, during such periods, no Defendant is obligated to make any payment in excess of or in addition to Assigned Claim Recoveries. Upon full satisfaction of the Settlement Payment at any time during the Settlement Payment Term, the Trustee shall promptly (but not later than seven (7) calendar days) re-assign the Assigned Claims to Defendants by executing and delivering an assignment to each of the Defendants or their designee(s), limited to a maximum, potential recovery of the difference between the value of the aggregate amount of the Defendant Net Equity Claims and the value of the Defendant Net Equity Claims previously applied to reduce Defendants' obligations in respect of the Settlement Payment (such difference being the "Tail Payment"). Upon full satisfaction of the Settlement Payment, Defendants shall be entitled to receive in full any distributions in respect of Defendant Net Equity Claims on the same basis as "good faith" customers of BLMIS, including any distribution made after the end of the Fifth Period.

(f) For the avoidance of doubt, unless and until the Settlement Payment is fully satisfied, the Trustee shall have no obligation to re-assign the Assigned Claims to the Defendants, and the Defendants shall not be entitled to receive all or any part of the Tail Payment.

(g) Defendants' Installment Payments. If the Settlement Payment is not fully satisfied after applying all of the Assigned Claim Recoveries during the First through the Third Periods of the Settlement Payment Term, the remaining unpaid amount of the Settlement

Payment (the "Remaining Amount") shall be divided into two equal annual installments to be paid no later than the end of the Fourth and Fifth Periods of the Settlement Payment Term. Any and all Assigned Claim Recoveries received during the Fourth and Fifth Periods shall immediately and automatically be applied to the next due installment during the Fourth and Fifth Periods of the Settlement Payment Term to reduce the payment in respect of the Remaining Amount for that Period. If the installment payment for the Fourth Period is satisfied in full by Assigned Claim Recoveries, any excess will be applied to the Fifth Period installment. The annual installment payments shall be made by wire transfer of immediately available funds in accordance with written instructions provided by the Trustee to Defendants no later than thirty (30) days prior to the relevant payment date.

(h) Each Defendant shall be responsible, on a several and not joint basis, for his, her, or its proportionate (*i.e.*, percentage) share of the Remaining Amount in proportion to his, her, or its proportionate share of the Alleged Six-Year Profits. With respect to accounts held jointly or as tenants in common, each Defendant shall be responsible, on a several and not joint basis, for his, her, or its proportionate share of that account's proportionate share of the Remaining Amount. A detailed schedule of the Alleged Six-Year Profits reflecting the relevant BLMIS account number, the account holder's name, the Defendant or Defendants related to each such BLMIS account, the amount of the Alleged Six-Year Profits by account, and each Defendant's proportionate share of the Alleged Six-Year Profits is attached as Schedule 2 to this Agreement.

(i) Fred Wilpon and Saul Katz Guarantees. Fred Wilpon and Saul Katz ("Guarantors"), jointly and severally, irrevocably and unconditionally, and regardless of which Defendant fails to pay his, her, or its proportionate share of the Remaining Amount, hereby

guarantee payment of the Remaining Amount owed to the Trustee up to an aggregate amount of Twenty-Nine Million United States Dollars (\$29,000,000) (the “Guarantee”). The Trustee shall not recover on the Guarantee unless a Defendant has not paid in full his, her, or its proportionate share of the Remaining Amount at the end of the Fourth and/or Fifth Periods of the Settlement Payment Term. In the event that a Defendant does not pay his, her, or its proportionate share of the Remaining Amount when it is due, the Trustee shall, within three (3) business days, make a written demand of the Guarantors, who shall promptly (but not later than three (3) business days from the date of the Trustee’s written demand) satisfy the demand. Under no circumstances shall the aggregate amount of any payments made by the Guarantors in satisfaction of the Guarantee exceed \$29,000,000.

(j) Following the Effective Date, the Parties shall agree to specific dates for each of the First through the Fifth Periods of the Settlement Payment Term as follows:

| |
|--|
| EFFECTIVE DATE: [Month/Date/2012] |
| END OF FIRST PERIOD: Twelve calendar months following the Effective Date, or [Month/Date/2013] |
| END OF SECOND PERIOD: Twelve calendar months following the end of the First Period, or [Month/Date/2014] |
| END OF THIRD PERIOD: Twelve calendar months following the end of the Second Period, or [Month/Date/2015] |
| END OF FOURTH PERIOD: Twelve calendar months following the end of the Third Period, or [Month/Date/2016] |
| END OF FIFTH PERIOD: Twelve calendar months following the end of the Fourth Period, or [Month/Date/2017] |

(k) The Trustee shall treat the Defendant General Creditor Claims on the same basis as he treats the same types of claims asserted by "good faith" customers, including with respect to any recoveries to which such claims will be entitled.

3. **Mutual Releases.**

(a) Except with respect to any rights and obligations arising under this Agreement (including rights and obligations relating to Defendant Net Equity Claims and Defendant General Creditor Claims), the Trustee, for himself and on behalf of BLMIS, Madoff, and the BLMIS Estate ("Trustee Releasors"), hereby fully, finally, and forever releases, remises, relinquishes, and discharges Defendants and their professionals and agents from any and all past, present, or future claims or causes of action (including any suit, petition, demand, or other claim in law, equity or arbitration) and from any and all allegations of liability or damages (including any allegation of duties, debts, reckonings, contracts, controversies, agreements, promises, damages, responsibilities, covenants, or accounts) of whatever kind, nature or description, direct or indirect, in law, equity or arbitration, absolute or contingent, in tort, contract, statutory liability or otherwise, based on willful blindness, strict liability, negligence, gross negligence, fraud, breach of fiduciary duty or otherwise (including attorneys' fees, costs or disbursements) known or unknown, that are, have been, could have been, or might in the future be, asserted by the Trustee against Defendants based on, arising out of, or relating in any way to Madoff, BLMIS, their liquidation proceedings, the BLMIS Estate or any BLMIS account held in the name of any Defendant (the "Trustee Released Claims").

(b) Except with respect to any rights and obligations arising under this Agreement (including rights and obligations relating to Defendant Net Equity Claims and Defendant General Creditor Claims), each of the Defendants for himself, herself or itself, and in

the case of a corporate or partnership Defendant, its shareholders, members, officers and directors, partners, their successors in interest and assigns ("Defendant Releasors"), hereby fully, finally, and forever releases, remises, relinquishes, and discharges the Trustee, his professionals and agents and the BLMIS Estate from any and all claims or causes of action (including any suit, petition, demand, or other claim in law, equity or arbitration) and from any and all allegations of liability or damages (including any allegation of duties, debts, reckonings, contracts, controversies, agreements, promises, damages, responsibilities, covenants, or accounts) of whatever kind, nature or description, direct or indirect, in law, equity or arbitration, absolute or contingent, in tort, contract, statutory liability or otherwise, based on strict liability, negligence, gross negligence, fraud, breach of fiduciary duty or otherwise (including attorneys' fees, costs or disbursements) known or unknown, that are, have been, could have been, or might in the future be, asserted by Defendant Releasors against the Trustee based on, arising out of, or relating in any way to Madoff, BLMIS, their liquidation proceedings, the BLMIS Estate and any BLMIS account held by any of the Defendants (the "Defendant Released Claims").

(c) With respect to any and all Trustee Released Claims or Defendant Released Claims, the Trustee and Defendant Releasors shall expressly waive or be deemed to have waived the provisions, rights, and benefits of California Civil Code § 1542 (to the extent it applies herein) and any provisions, rights, and benefits conferred by any law of any state or territory of the United States or principle of common law that is similar, comparable, or equivalent to California Civil Code § 1542, which provides:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR EXPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

Except with respect to the rights and obligations arising under this Agreement, the Trustee and Defendants each acknowledge that each may hereafter discover facts in addition to or different from those that each now knows or believes to be true with respect to the subject matter of the Trustee Released Claims or the Defendant Released Claims, respectively, but the Trustee and Defendants each shall expressly have and shall be deemed to have fully, finally, and forever settled, released, and discharged any and all Trustee Released Claims and Defendant Released Claims, respectively, known or unknown, suspected or unsuspected, contingent or non-contingent, whether or not concealed or hidden, which now exist or heretofore have existed, upon any theory of law or equity now existing or coming into existence in the future, including conduct that is negligent, reckless, intentional, with or without malice, or a breach of any duty, law or rule, without regard to the subsequent discovery or existence or such different or additional facts.

4. **Termination of Litigation.** On or as soon as practical after the Effective Date, the Parties will file a stipulation of dismissal dismissing the Action with prejudice and without cost to any Party. Within three (3) business days after the Effective Date, Defendants shall withdraw their petition for a writ of *certiorari* filed with the United States Supreme Court from the Second Circuit Net Equity Order. Defendants agree not to pursue or join any other litigation, or to provide legal counsel to any other defendant involved in any litigation, involving the Trustee or SIPC arising out of or relating to BLMIS, Madoff, their liquidation proceeding and the BLMIS Estate, including filing any motion, memorandum or other court document, except with respect to (i) any rights or obligations arising under this Agreement; (ii) the litigation involving, among others, Eric Saretsky on behalf of the participants in the Sterling Equities Employees Retirement Plan; and (iii) the litigation captioned *Picard v. Estate of Marjorie K.*

Osterman, et al. The Parties agree not to make any disparaging statement with respect to each other or the Settlement.

5. **Conditions.** Notwithstanding any provision of this Agreement to the contrary, the obligations of the Parties are subject to the receipt of (a) approval of the Settlement by the District Court pursuant to Rule 9019 of the Federal Rules of Bankruptcy Procedure and entry of the Approval Order, and (b) any required lender approvals, which shall be obtained by no later than April 13, 2012.

6. **Representations and Warranties.**

(a) The Trustee hereby represents and warrants to Defendants that, subject to the Approval Order: (i) he has the full power, authority and legal right to execute and deliver this Agreement and to perform his obligations hereunder; (ii) this Agreement has been duly executed and delivered by the Trustee and constitutes the valid and binding agreement of the Trustee, enforceable against the Trustee in accordance with its terms; and (iii) in executing this Agreement, the Trustee has done so with the full knowledge of any and all rights that he may have with respect to the controversies herein compromised, and the Trustee has received or has had the opportunity to obtain independent legal advice from his counsel with regard to the facts relating to said controversies and with respect to the rights arising out of said facts.

(b) Each Defendant, solely with respect to himself, herself, or itself, hereby represents and warrants to the Trustee that: (i) he, she, or it has the full power, authority, legal right and capacity to execute and deliver this Agreement and to perform his, her, or its respective obligations hereunder; (ii) he, she, or it has the full power, authority and legal right to execute and deliver to the Trustee the Assignment of his, her, or its Defendant Net Equity Claim, which has not previously been assigned, except pursuant to a lien that has been released as

contemplated in paragraph 1(d)(i)(y), in whole or in part; (iii) he, she, or it has taken such steps and actions, as necessary, such that the holders of any obligations entitled to notice from such Defendant have been given notice of this Agreement and Defendant's obligations to the Trustee under this Agreement; (iv) he, she or it has obtained a Release of Lien, a copy of which shall be provided to the Trustee prior to the Effective Date; (v) the Assigned Claim is free and clear of any lien, claim, interest or encumbrance held by any third party; (vi) this Agreement has been duly executed and delivered by such Defendant and constitutes the valid and binding agreement of such Defendant, enforceable against such Defendant in accordance with its terms; and (vii) in executing this Agreement, such Defendant has done so with the full knowledge of any and all rights that such Defendant may have with respect to the controversies herein compromised, and such Defendant has received or has had the opportunity to obtain independent legal advice from his, her, or its attorneys with regard to the facts relating to said controversies and with respect to the rights arising out of said facts.

(c) Each of the representations and warranties set forth in this paragraph 6 shall survive in perpetuity.

7. **Further Assurances.** Each Party shall execute and deliver any document or instrument reasonably requested by the other Party after the date of this Agreement to effectuate the intent of this Agreement.

8. **Return, Destruction, and Confidentiality of Documents.**

(a) Notwithstanding any other provision of this Agreement, and pursuant to the October 30, 2011 protective order entered in the Action, the provisions of which are incorporated herein by reference, any Party that received documents designated or identified as "Confidential" or "Highly Confidential" by any other Party that produced the documents (the

“Producing Party”) at any time in connection with the Action, including during Rule 2004 Discovery, the mediation relating to the Action, or in relation to this Agreement, shall, within thirty (30) days of the final disposition of the Action, (a) return to the offices of the Producing Party’s counsel all such documents, including any copies thereof, or (b) if the Producing Party does not require return of such documents, certify to counsel for the Producing Party that all such documents, including any copies thereof, have been destroyed. For the avoidance of doubt, the obligations under this paragraph to return documents to the Producing Party include documents produced by the Trustee to the Defendants.

(b) The Trustee agrees to maintain at all times the confidentiality of all information provided by Defendants, on or before the date hereof, that Defendants designated “Confidential” or “Highly Confidential.”

9. **Entire Agreement.** This Agreement (including all schedules and any exhibits hereto) constitutes the entire agreement and understanding between the Parties pertaining to the subject matter hereof and supersedes any and all prior or contemporaneous agreements, including the MOU, representations and understandings of the Parties concerning the subject matter hereof.

10. **Amendment; Waiver.** This Agreement may not be terminated, amended or modified in any way except by written instrument signed by all Parties hereto or their successors-in-interest. No waiver of any provision of this Agreement shall be deemed to constitute a waiver of any other provision hereof, whether or not similar, nor shall such waiver constitute a continuing waiver.

11. **Assignment.** This Agreement may not be assigned by any Party without the prior written consent of the other Parties, provided that nothing herein shall prohibit any Defendant

that is a corporation, partnership, limited liability company, or other entity from pledging or assigning its interest in this Agreement in connection with borrowings or the sale of all or substantially all of such Defendant's assets. In the event of such a pledge or assignment, the obligations of such Defendant shall remain in full force and effect and shall not be impaired. Any such assignor shall provide to the Trustee written notice of the assignment of its interest in this Agreement within ten (10) business days thereafter.

12. **Successors.** This Agreement shall be binding upon and inure to the benefit of each Party and his, her, or its respective successors, heirs, estates, and personal representatives.

13. **Construction.** This Agreement has been fully negotiated by the Parties. Each Party acknowledges and agrees that this Agreement has been drafted jointly, and the rule that ambiguities in an agreement or contract may be construed against the drafter shall not apply in the construction or interpretation of this Agreement. Words used herein, regardless of the number and gender specifically used, shall be deemed and construed to include any other number, singular or plural, and any other gender, masculine, feminine, or neuter, as the context indicates is appropriate. Any reference in this Agreement to a paragraph is to a paragraph of this Agreement. "Including" is not intended to be a limiting term.

14. **Headings.** The headings in this Agreement are inserted only as a matter of convenience and for reference and do not define, limit or describe the scope of this Agreement or the scope or content of any of its provisions.

15. **Choice of Law.** This Agreement and any claim related directly or indirectly to this Agreement shall be governed by and construed in accordance with the laws of the State of New York (without regard to the principle of conflicts of law thereof), the Bankruptcy Code, and SIPA. Each Party hereby waives on behalf of itself and its successors and assigns any and all

right to argue that the choice of New York law provision is or has become unreasonable in any legal proceeding.

16. **Choice of Forum.** Any action arising out of this Agreement, or relating to the performance or breach of the Parties hereunder or the interpretation hereof, shall be brought exclusively in the District Court, and each of the Parties (a) consents to jurisdiction in such court, (b) agrees that it will not bring any action relating to this Agreement, including the performance or breach or interpretation of this Agreement, in any court other than the District Court, and (c) agrees that any such action should, to the extent possible, be referred to Judge Jed S. Rakoff.

17. **WAIVER OF JURY TRIAL.** THE PARTIES EXPRESSLY AND IRREVOCABLY WAIVE, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT TO TRIAL BY JURY FOR ANY CLAIM, COUNTERCLAIM, ACTION, OR OTHER PROCEEDING ARISING UNDER OR RELATING TO THIS AGREEMENT, ANY RIGHTS OR OBLIGATIONS HEREUNDER, THE PERFORMANCE OF SUCH RIGHTS AND OBLIGATIONS OR THE RELATIONSHIP BETWEEN THE PARTIES, IN EACH CASE WHETHER SUCH CLAIM, COUNTERCLAIM, ACTION, OR OTHER PROCEEDING IS NOW EXISTING OR HEREAFTER ARISING, AND WHETHER SOUNDING IN CONTRACT, TORT, OR OTHERWISE.

18. **Expenses.** Each Party shall bear its respective expenses relating to or arising out of this Agreement, including, but not limited to, fees for attorneys and other advisors.

19. **Notices.** All notices, requests, demands, consents and communications necessary or required under this Agreement shall be in writing and shall be delivered by hand or sent by registered or certified mail (return receipt requested), by overnight courier (with confirmation), by facsimile (receipt confirmed), or by electronic means (receipt confirmed), in each case

addressed and copied as set forth on the applicable signature page hereto. A Party may change its address for receiving notice by giving notice of a new address in the manner provided herein. All such notices, requests, demands, consents and other communications shall be deemed to have been duly given or sent two (2) days following the date on which mailed, or on the date on which delivered by courier or by hand or by facsimile or electronic transmission (receipt confirmed), addressed as follows:

If to the Trustee:

Irving H. Picard
c/o Baker & Hostetler LLP
45 Rockefeller Plaza
New York, New York 10111
Facsimile No.: (212) 589-4201

If to any Defendant:

c/o Davis Polk & Wardwell LLP
450 Lexington Avenue
New York, New York 10017
Attention: Robert F. Wise, Jr.
Karen E. Wagner
Dana M. Seshens
Facsimile No.: (212) 701-5800

with copies to:

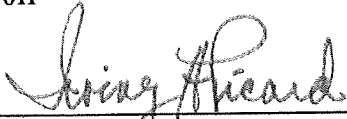
Baker & Hostetler LLP
45 Rockefeller Plaza
New York, New York 10111
Attention: David J. Sheehan
Fernando A. Bohorquez, Jr.
Facsimile No.: (212) 589-4201

20. **No Third-Party Beneficiaries.** Nothing contained in this Agreement is intended to confer any benefit upon any person or entity other than the Parties hereto and their respective successors and permitted assigns.

21. **Counterparts.** This Agreement may be executed and delivered in any number of counterparts, each of which so executed and delivered shall be deemed to be an original and all of which shall constitute one and the same document. Each Party may evidence its execution of this Agreement by delivery to the other Party of scanned or faxed copies of its signature, with the same effect as the delivery of an original signature.

Each Party has caused this Agreement to be duly executed and delivered as of the date set forth above.

**Irving H. Picard, the Trustee for the liquidation
proceedings of Bernard L. Madoff Investment
Securities LLC and the substantively
consolidated bankruptcy case of Bernard L.
Madoff**



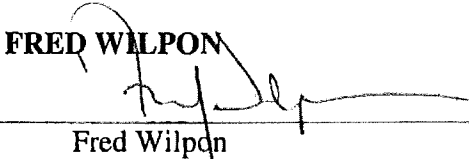
Irving H. Picard

SAUL B. KATZ



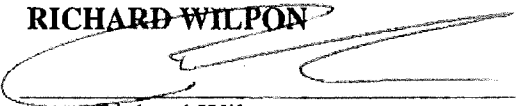
Saul B. Katz

FRED WILPON



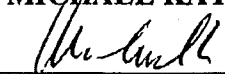
Fred Wilpon

RICHARD WILPON



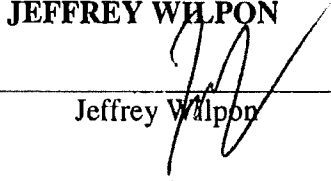
Richard Wilpon

MICHAEL KATZ




Michael Katz

JEFFREY WILPON



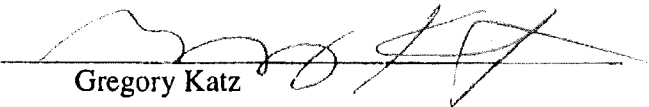
Jeffrey Wilpon

DAVID KATZ



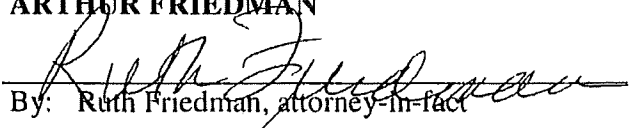
David Katz

GREGORY KATZ



Gregory Katz

ARTHUR FRIEDMAN


By: Ruth Friedman, attorney-in-fact

L. THOMAS OSTERMAN

L. Thomas Osterman

MARVIN B. TEPPER

Marvin B. Tepper

ESTATE OF LEONARD SCHREIER

By: Fred Wilpon, Co-administrator

By: Jason Bacher, Co-administrator

Mets Limited Partnership

By: C.D.S. Corp., its general partner

By: Fred Wilpon, CEO

Sterling Mets, L.P.

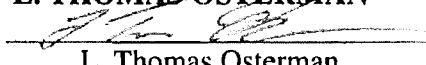
By: Mets Partners, Inc., its general partner

By: David P. Cohen, Executive Vice
President

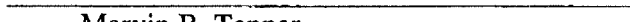
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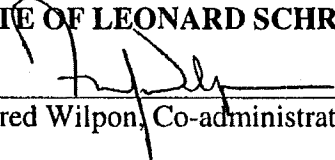
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L. Thomas Osterman

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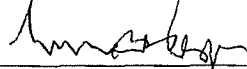
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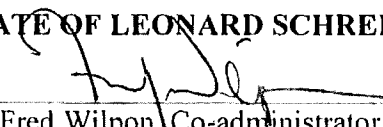
L. THOMAS OSTERMAN

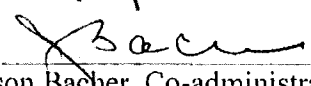
L. Thomas Osterman

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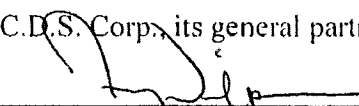
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By: Jason Bacher, Co-administrator

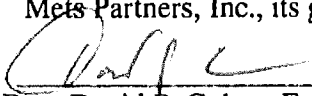
Mets Limited Partnership

By: C.D.S. Corp., its general partner

By: Fred Wilpon, CEO

Sterling Mets, L.P.

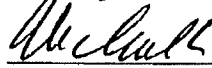
By: Mets Partners, Inc., its general partner



By: David P. Cohen, Executive Vice
President

Mets II LLC

By: Sterling Mets Associates II, its member



By: Michael Katz, Partner

FS COMPANY, L.L.C.

By: Sterling Heritage, L.L.C., its member



By: Michael Katz, Managing Member

CHARLES STERLING SUB LLC

By: Charles Sterling 15 LLC, its manager



By: Michael Katz, Manager

COLLEGE PLACE ENTERPRISES LLC



By: Saul B. Katz, Member

FFB AVIATION LLC



By: Michael Katz, Manager

**IRIS J. & SAUL B. KATZ FAMILY
FOUNDATION INC.**

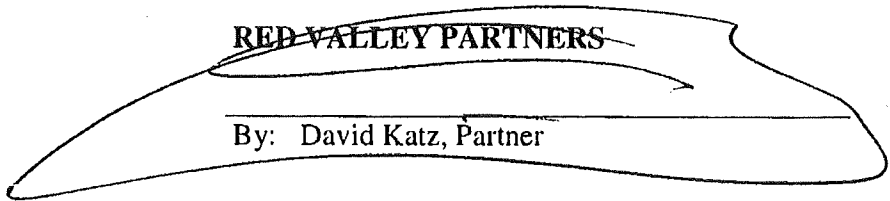


By: Saul B. Katz, Director

**JUDY AND FRED WILPON FAMILY
FOUNDATION, INC.**


By: Fred Wilpon, Director

RED VALLEY PARTNERS

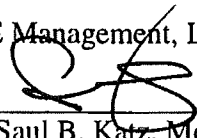

By: David Katz, Partner

ROBBINSVILLE PARK, LLC


By: Michael Katz, Manager

SEE HOLDCO, LLC

By: SEE Management, LLC, its manager


By: Saul B. Katz, Member

STERLING 10 LLC


By: Michael Katz, Manager

STERLING 15C L.L.C.

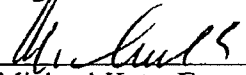

By: Michael Katz, Member

STERLING 20 LLC


By: Michael Katz, Manager

STERLING AMERICAN ADVISORS II L.P.

By: Sterling Advisors II Corp., a general partner


By: Michael Katz, Executive Vice President

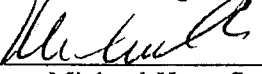
STERLING BRUNSWICK SEVEN L.L.C.


By: Michael Katz, Manager

STERLING DIST PROPERTIES LLC


By: Michael Katz, Manager

STERLING EQUITIES


By: Michael Katz, Senior Executive Vice
President

STERLING EQUITIES ASSOCIATES


By: Michael Katz, Partner

STERLING INTERNAL V LLC



By: Michael Katz, Managing Member

STERLING THIRTY VENTURE LLC



By: Michael Katz, Manager

STERLING TRACING LLC



By: Michael Katz, Manager

STERLING TWENTY FIVE LLC



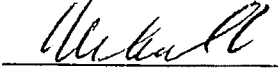
By: Michael Katz, Manager

STERLING VC IV LLC



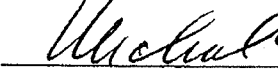
By: Michael Katz, Manager

STERLING VC V LLC




By: Michael Katz, Manager

SAUL B. KATZ FAMILY TRUST

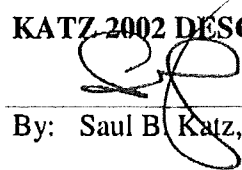


By: Michael Katz, Trustee

FRED WILPON FAMILY TRUST


By: Richard Wilpon, Trustee

KATZ 2002 DESCENDANTS' TRUST


By: Saul B. Katz, Trustee

WILPON 2002 DESCENDANTS' TRUST


By: Fred Wilpon, Trustee

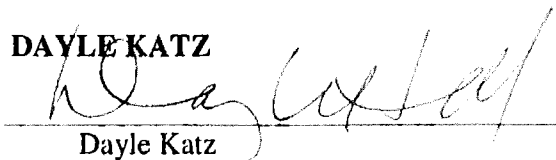
IRIS KATZ

Iris Katz

JUDITH WILPON

Judith Wilpon

DAYLE KATZ


Dayle Katz

DEBRA WILPON

Debra Wilpon

FRED WILPON FAMILY TRUST

By: Richard Wilpon, Trustee

KATZ 2002 DESCENDANTS' TRUST

By: Saul B. Katz, Trustee

WILPON 2002 DESCENDANTS' TRUST

By: Fred Wilpon, Trustee

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Iris Katz

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Debra Wilpon

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WILPON 2002 DESCENDANTS' TRUST

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Iris Katz

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Debra Wilpon

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By: Saul B. Katz, Trustee

WILPON 2002 DESCENDANTS' TRUST

By: Fred Wilpon, Trustee

IRIS KATZ

Iris Katz

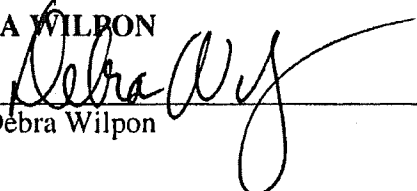
JUDITH WILPON

Judith Wilpon

DAYLE KATZ

Dayle Katz

DEBRA WILPON


Debra Wilpon

VALERIE WILPON



Valerie Wilpon

AMY BETH KATZ

Amy Beth Katz

HEATHER KATZ KNOFF

Heather Katz Knopf

HOWARD KATZ

Howard Katz

NATALIE KATZ O'BRIEN

Natalie Katz O'Brien

TODD KATZ

Todd Katz

BRUCE N. WILPON

Bruce N. Wilpon

VALERIE WILPON

Valerie Wilpon

AMY BETH KATZ


Amy Beth Katz

HEATHER KATZ KNOPF

Heather Katz Knopf

HOWARD KATZ

Howard Katz

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Natalie Katz O'Brien

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Todd Katz

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Bruce N. Wilpon

VALERIE WILPON

Valerie Wilpon

AMY BETH KATZ

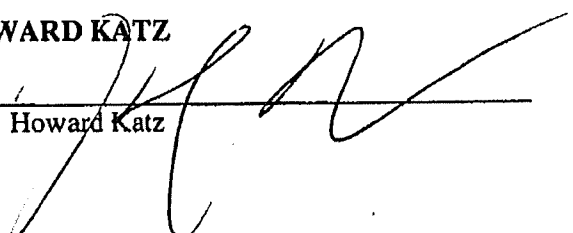
Amy Beth Katz

HEATHER KATZ KNOFF

Heather Katz Knopf

HOWARD KATZ

Howard Katz



NATALIE KATZ O'BRIEN

Natalie Katz O'Brien

TODD KATZ

Todd Katz

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Bruce N. Wilpon

VALERIE WILPON

Valerie Wilpon

AMY BETH KATZ

Amy Beth Katz

HEATHER KATZ KNOFF

Heather Katz Knopf

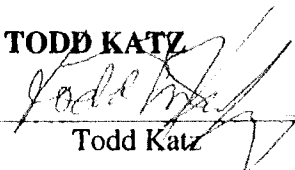
HOWARD KATZ

Howard Katz

NATALIE KATZ O'BRIEN

Natalie Katz O'Brien

TODD KATZ



Todd Katz

BRUCE N. WILPON

Bruce N. Wilpon

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Heather Katz Knopf

HOWARD KATZ

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NATALIE KATZ O'BRIEN

Natalie Katz O'Brien

TODD KATZ

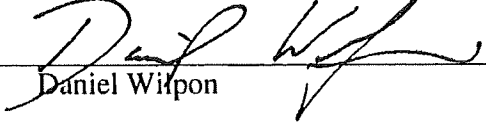
Todd Katz

BRUCE N. WILPON



Bruce N. Wilpon

DANIEL WILPON


Daniel Wilpon

JESSICA WILPON KAMEL


Jessica Wilpon Kamel

ROBIN WILPON WACHTLER

Robin Wilpon Wachtler

PHILIP WACHTLER

Philip Wachtler

SCOTT WILPON

Scott Wilpon

RUTH FRIEDMAN

Ruth Friedman

PHYLLIS REBELL OSTERMAN

Phyllis Rebell Osterman

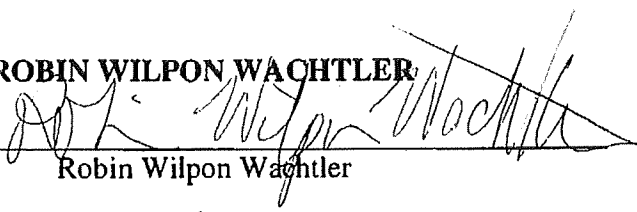
DANIEL WILPON

Daniel Wilpon

JESSICA WILPON KAMEL

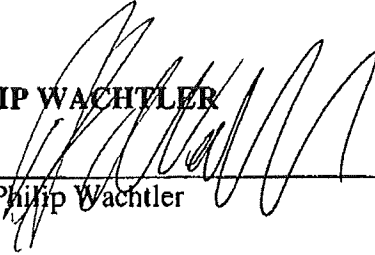
Jessica Wilpon Kamel

ROBIN WILPON WACHTLER



Robin Wilpon Wachtler

PHILIP WACHTLER



Philip Wachtler

SCOTT WILPON

Scott Wilpon

RUTH FRIEDMAN

Ruth Friedman

PHYLLIS REBELL OSTERMAN

Phyllis Rebell Osterman

DANIEL WILPON

Daniel Wilpon

JESSICA WILPON KAMEL

Jessica Wilpon Kamel

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Robin Wilpon Wachtler

PHILIP WACHTLER

Philip Wachtler

SCOTT WILPON



Scott Wilpon

RUTH FRIEDMAN

Ruth Friedman

PHYLLIS REBELL OSTERMAN

Phyllis Rebell Osterman

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JESSICA WILPON KAMEL

Jessica Wilpon Kamel

ROBIN WILPON WACHTLER

Robin Wilpon Wachtler

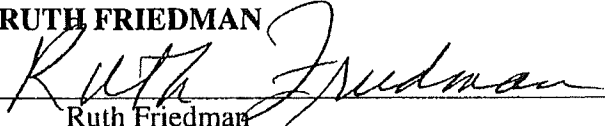
PHILIP WACHTLER

Philip Wachtler

SCOTT WILPON

Scott Wilpon

RUTH FRIEDMAN


Ruth Friedman

PHYLLIS REBELL OSTERMAN

Phyllis Rebell Osterman

DANIEL WILPON

Daniel Wilpon

JESSICA WILPON KAMEL

Jessica Wilpon Kamel

ROBIN WILPON WACHTLER

Robin Wilpon Wachtler

PHILIP WACHTLER

Philip Wachtler

SCOTT WILPON

Scott Wilpon

RUTH FRIEDMAN

Ruth Friedman

PHYLLIS REBELL OSTERMAN

Phyllis Rebelle Osterman
Phyllis Rebelle Osterman

ELISE C. TEPPER

Elise C. Tepper
Elise C. Tepper

JACQUELINE G. TEPPER

Jacqueline G. Tepper

EDWARD M. TEPPER

Edward M. Tepper

DEVYA SCHREIER ARTHUR

Devya Schreier Arthur

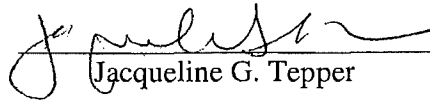
STERLING ACQUISITIONS LLC

By: Michael Katz, Member

ELISE C. TEPPER

Elise C. Tepper

JACQUELINE G. TEPPER



Jacqueline G. Tepper

EDWARD M. TEPPER

Edward M. Tepper

DEVYA SCHREIER ARTHUR

Devya Schreier Arthur

STERLING ACQUISITIONS LLC

By: Michael Katz, Member

ELISE C. TEPPER

Elise C. Tepper

JACQUELINE G. TEPPER

Jacqueline G. Tepper

EDWARD M. TEPPER



Edward M. Tepper

DEVYA SCHREIER ARTHUR

Devya Schreier Arthur

STERLING ACQUISITIONS LLC

By: Michael Katz, Member

ELISE C. TEPPER

Elise C. Tepper

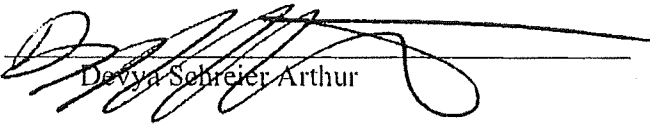
JACQUELINE G. TEPPER

Jacqueline G. Tepper

EDWARD M. TEPPER

Edward M. Tepper

DEVYA SCHREIER ARTHUR



Devya Schreier Arthur

STERLING ACQUISITIONS LLC

By: Michael Katz, Member

ELISE C. TEPPER

Elise C. Tepper

JACQUELINE G. TEPPER

Jacqueline G. Tepper

EDWARD M. TEPPER

Edward M. Tepper

DEVYA SCHREIER ARTHUR

Devya Schreier Arthur

STERLING ACQUISITIONS LLC

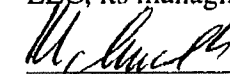

By: Michael Katz, Member

STERLING AMERICAN PROPERTY V L.P.

By: Sterling American Advisors V LLC, its
general partner

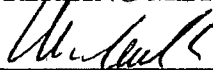
By: Sterling Advisors V LLC, its managing
member

By: Sterling SAP V Equity Partners
LLC, its managing member



By: Michael Katz, Co-CEO

STERLING METS ASSOCIATES



By: Michael Katz, Partner

STERLING METS ASSOCIATES II



By: Michael Katz, Partner

METS ONE LLC

By: Sterling Mets Associates, its member



By: Michael Katz, Partner

METS PARTNERS, INC.

By: David P. Cohen, Executive Vice President

STERLING AMERICAN PROPERTY V L.P.

By: Sterling American Advisors V LLC, its
general partner

By: Sterling Advisors V LLC, its managing
member

By: Sterling SAP V Equity Partners
LLC, its managing member

By: Michael Katz, Co-CEO

STERLING METS ASSOCIATES

By: Michael Katz, Partner

STERLING METS ASSOCIATES II

By: Michael Katz, Partner

METS ONE LLC

By: Sterling Mets Associates, its member

By: Michael Katz, Partner

METS PARTNERS, INC.



By: David P. Cohen, Executive Vice President

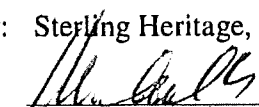
C.D.S. CORP.


By: Fred Wilpon, CEO

**CONEY ISLAND BASEBALL HOLDING
COMPANY, L.L.C.**

By: FS Company, L.L.C., its managing member

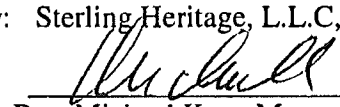
By: Sterling Heritage, L.L.C., its member


By: Michael Katz, Managing Member

BROOKLYN BASEBALL COMPANY L.L.C.

By: FS Company, L.L.C., its managing member

By: Sterling Heritage, L.L.C, its member


By: Michael Katz, Managing Member

157 J.E.S. LLC


By: Michael Katz, Manager

AIR STERLING LLC


By: Michael Katz, Manager

BAS AIRCRAFTS LLC


By: Richard Wilpon, Manager

BON-MICK FAMILY PARTNERS, L.P.

By: Bon Mick, Inc., its general partner


By: Michael Katz, Vice President

CHARLES 15 ASSOCIATES


By: Charles 15 LLC, a general partner

By: Charles Sterling 15 LLC, its manager


By: Michael Katz, Manager


CHARLES 15 LLC

By: Charles Sterling 15 LLC, its manager

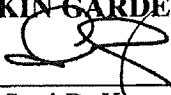

By: Michael Katz, Manager

CHARLES STERLING LLC

By: Charles Sterling 15 LLC, its manager


By: Michael Katz, Manager

RUSKIN GARDEN APARTMENTS LLC



By: Saul B. Katz, Managing Member

BON-MICK, INC.

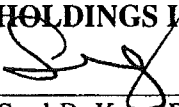


By: Michael Katz, Vice President

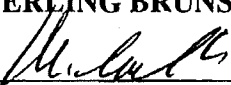
SEE HOLDINGS I


By: Michael Katz, Partner


SEE HOLDINGS II


By: Saul B. Katz, Partner

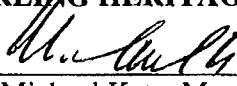
STERLING BRUNSWICK CORPORATION


By: Michael Katz, Manager

STERLING EQUITIES INVESTORS


By: Michael Katz, Partner

STERLING HERITAGE, L.L.C.


By: Michael Katz, Managing Member

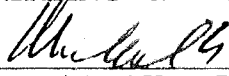
STERLING JET LTD.


By: Fred Wilpon, President

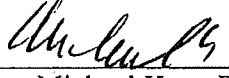
STERLING JET II, LTD.


By: Saul B. Katz, President

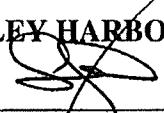
STERLING PATHOGENESIS COMPANY


By: Michael Katz, Partner

STERLING THIRD ASSOCIATES


By: Michael Katz, Partner

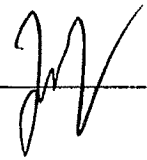
VALLEY HARBOR ASSOCIATES


By: Saul B. Katz, Partner

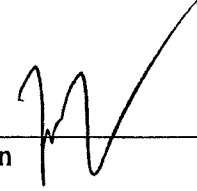
KIMBERLY WACHTLER

Kimberly Wachtler

MINOR 1


By: Jeffrey Wilpon

MINOR 2


By: Jeffrey Wilpon

MICHAEL SCHREIER

Michael Schreier

STERLING PATHOGENESIS COMPANY

By: Michael Katz, Partner

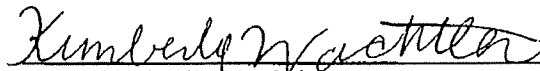
STERLING THIRD ASSOCIATES

By: Michael Katz, Partner

VALLEY HARBOR ASSOCIATES

By: Saul B. Katz, Partner

KIMBERLY WACHTLER



Kimberly Wachtler

MINOR 1

By: Jeffrey Wilpon

MINOR 2

By: Jeffrey Wilpon

MICHAEL SCHREIER

Michael Schreier

STERLING PATHOGENESIS COMPANY

By: Michael Katz, Partner

STERLING THIRD ASSOCIATES

By: Michael Katz, Partner

VALLEY HARBOR ASSOCIATES

By: Saul B. Katz, Partner

KIMBERLY WACHTLER

Kimberly Wachtler


MINOR 1

By: Jeffrey Wilpon

MINOR 2

By: Jeffrey Wilpon

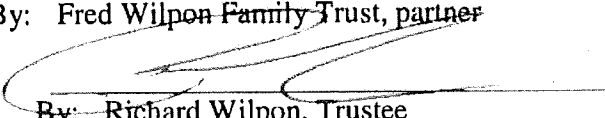
MICHAEL SCHREIER



Michael Schreier

REALTY ASSOCIATES MADOFF II


By: Fred Wilpon Family Trust, partner


By: Richard Wilpon, Trustee

**STERLING AMERICAN PROPERTY III
L.P.**

By: Sterling American Advisors III LLC, a
general partner


By: Sterling Advisors III LLC, a managing
member


By: Michael Katz, Executive Vice
President

**STERLING AMERICAN PROPERTY IV
L.P.**

By: Sterling American Advisors IV LLC, a
general partner

By: Sterling Advisors IV LLC, a managing
member

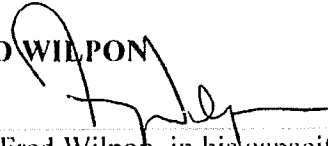

By: Michael Katz, Senior Executive Vice
President

SAUL B. KATZ



Saul B. Katz, in his capacity as Guarantor
as defined herein

FRED WILPON



Fred Wilpon, in his capacity as Guarantor
as defined herein

Schedule 1

Summary of Allowed Net Equity Claims Against the BLMIS Estate
April 13, 2012

| Totals | 56 | | | \$177,563,039.08 | |
|---------|--------------------------------|-------------------------------|-----------------------|------------------|--------------|
| Account | Line 1 | Line 2 | Line 3 | Net Equity | Claim Number |
| 1KW001 | BON MICK FAMILY PARTNERS L P | | | \$32,040.00 | 009928 |
| 1KW013 | DAYLE KATZ | | | \$380,435.00 | 009930 |
| 1KW019 | MICHAEL KATZ | | | \$306,936.04 | 009932 |
| 1KW061 | ELISE C TEPPER | | | \$1,779,065.42 | 009937 |
| 1KW076 | JEFFREY S WILPON | & VALERIE WILPON JT TENANTS | | \$3,104,689.36 | 009939 |
| 1KW108 | GREGORY KATZ | | | \$178,937.89 | 009947 |
| 1KW109 | HOWARD KATZ | MICHAEL KATZ AS CUSTODIAN | | \$48,125.00 | 009948 |
| 1KW110 | TODD KATZ | MICHAEL KATZ AS CUSTODIAN | | \$34,073.00 | 009949 |
| 1KW206 | THE WILPON FAMILY 1997 | DESCENDANT'S TRUST | C/O STERLING EQUITIES | \$220,000.00 | 009909 |
| 1KW209 | DANIEL WILPON | RICHARD A WILPON AS CUSTODIAN | | \$282,659.14 | 009910 |
| 1KW242 | SAUL B KATZ FAMILY TRUST | | | \$4,875,617.50 | 009913 |
| 1KW248 | DAYLE H & MICHAEL KATZ | FOUNDATION INC | | \$617,000.00 | 009916 |
| 1KW260 | FRED WILPON FAMILY TRUST | | | \$678,485.79 | 009920 |
| 1KW263 | MARVIN B TEPPER | | | \$440,800.00 | 009921 |
| 1KW275 | L THOMAS OSTERMAN 1999 TRUST | | | \$15,720.00 | 009923 |
| 1KW276 | PATRICIA THACKRAY 1999 TRUST | | | \$21,220.00 | 009924 |
| 1KW302 | RUTH FRIEDMAN | | | \$72,444.27 | 009902 |
| 1KW303 | ELISE TEPPER AS CUSTODIAN | FOR GRANDCHILDREN | | \$144,365.50 | 009903 |
| 1KW305 | VALERIE AND JEFFREY S WILPON | FOUNDATION | | \$70,050.00 | 009905 |
| 1KW309 | DAN KNOPF | HEATHER KNOPF JT TEN | C/O STERLING EQUITIES | \$198,000.00 | 009898 |
| 1KW313 | STERLING THIRTY VENTURE LLC | TR | | \$8,068,675.34 | 009897 |
| 1KW319 | THE TEPPER FAMILY FOUNDATION | | | \$30,895.00 | 009894 |
| 1KW320 | THE DEBRA & RICHARD A WILPON | FOUNDATION | | \$18,550.00 | 009887 |
| 1KW321 | THE PHYLLIS & THOMAS OSTERMAN | FAMILY FOUNDATION | | \$92,500.00 | 009888 |
| 1KW330 | THE RUTH AND ARTHUR FRIEDMAN | FAMILY FOUNDATION | | \$65,000.00 | 009889 |
| 1KW346 | ROBBINSVILLE PARK LLC | | | \$239,000.00 | 009893 |
| 1KW347 | FS COMPANY LLC | | | \$5,627,711.66 | 009886 |
| 1KW367 | ROBIN WACHTLER | & PHILIP WACHTLER JT/WROS | | \$667,000.00 | 009883 |
| 1KW374 | METS II LLC | | | \$3,556,888.64 | 009881 |
| 1KW384 | L THOMAS OSTERMAN | AND JILL PUPKE TIC | | \$136,911.09 | 009879 |
| 1KW389 | SCOTT WILPON 2000 TRUST | RICHARD WILPON TRUSTEE | | \$257,818.37 | 009878 |
| 1KW390 | JESSICA WILPON 2000 TRUST | RICHARD WILPON TRUSTEE | | \$245,711.87 | 009877 |
| 1KW391 | KATZ 2002 DESCENDANTS TRUST | | | \$70,500.00 | 009876 |
| 1KW396 | DEYVA ARTHUR | | | \$306,000.00 | 009875 |
| 1KW402 | STERLING 10 LLC | STERLING EQUITIES | | \$7,153,758.31 | 009872 |
| 1KW403 | RICHARD A WILPON | ANITA M TAPPY T.I.C | | \$27,728.27 | 009870 |
| 1KW413 | CHARLES STERLING SUB LLC | (PRIMARY) | | \$10,957,335.92 | 009871 |
| 1KW414 | CHARLES STERLING SUB LLC | (INTEREST) | | \$5,302,466.42 | 009869 |
| 1KW420 | STERLING BRUNSWICK SEVEN LLC | | | \$8,234,000.00 | 009868 |
| 1KW424 | HOWARD S KATZ | | C/O STERLING EQUITIES | \$415,057.00 | 009866 |
| 1KW426 | GREGORY A KATZ | & AMY BETH KATZ JT/WROS | | \$320,000.00 | 009865 |
| 1KW435 | STERLING INTERNAL V LLC | | C/O STERLING EQUITIES | \$18,034,620.00 | 009863 |
| 1KW437 | STERLING ADVISORS IV LLC | | | \$4,731,932.76 | 009862 |
| 1KW445 | WILPON 2002 DESCENDANT'S TRUST | | | \$462,500.00 | 009861 |
| 1KW446 | THE THOMAS OSTERMAN FAMILY | 2006 GRANTOR TRUST | | \$96,572.45 | 009860 |
| 1KW447 | STERLING TWENTY FIVE LLC | | | \$36,728,168.21 | 009859 |
| 1KW455 | STERLING TRACING LLC | STERLING EQUITIES | ARTHUR FRIEDMAN | \$24,523,164.00 | 009857 |
| 1KW457 | JACQUELINE TEPPER | | | \$260,747.02 | 009856 |
| 1KW458 | NATALIE KATZ O'BRIEN | AND BRENDAN O'BRIEN JT WROS | | \$570,000.00 | 009855 |
| 1KW460 | BRADOO-MOOMOO LLC | | C/O STERLING EQUITIES | \$189,252.84 | 009854 |
| 1KW463 | STERLING VC IV LLC | STERLING EQUITIES | ATTN: ARTHUR FRIEDMAN | \$1,933,625.00 | 009853 |
| 1KW464 | STERLING VC V LLC | STERLING EQUITIES | ATTN: ARTHUR FRIEDMAN | \$11,803,944.00 | 009852 |
| 1KW465 | STERLING DIST PROPERTIES LLC | STERLING EQUITIES | ATTN: ARTHUR FRIEDMAN | \$1,657,361.00 | 009851 |
| 1KW466 | COLLEGE PLACE ENTERPRISES LLC | | C/O STERLING EQUITIES | \$2,960,000.00 | 009850 |
| 1KW467 | RV-RJW LLC | C/O STERLING EQUITIES | | \$7,316,980.00 | 009849 |
| 1W0141 | JEFFREY S WILPON | & VALERIE WILPON JT/WROS | | \$1,000,000.00 | 009847 |

Schedule 2

Summary of Six-Year Transfers from BLMIS to Defendants in Excess of Principal
April 13, 2012

| Column 1 | Column 2 | Column 3 | Column 4 | Column 5 | Column 6 |
|---|-----------------|--|---------------------|------------------------|---|
| Defendant(s) | BLMIS Acct # | BLMIS Account Name | Total by Account | Proportionate Share | Proportionate Share - JT/TIC Accounts |
| Arthur Friedman | IKW004 | ARTHUR FRIEDMAN & RUTH FRIEDMAN J/T WROS | \$ 80,437 | 0.04943% | 0.02472% |
| Ruth Friedman | | | | | 0.02472% |
| Iris Katz | IKW014 | IRIS J KATZ C/O STERLING EQUITIES | \$ 22,464,687 | 13.80516% | |
| Iris J. Katz and Saul B. Katz Family Foundation, Inc. | IKW016 | IRIS & SAUL KATZ FAM FDN INC AND JUDY & FRED WILPON FAMILY FDN INC TIC | \$ 354,000 | 0.21754% | 0.10877% |
| Judy and Fred Wilpon Family Foundation, Inc. | | | | | 0.10877% |
| Dayle Katz | IKW020 | MICHAEL KATZ & DAYLE KATZ J/T WROS | \$ 553,483 | 0.34013% | 0.17007% |
| Michael Katz | | | | | 0.17007% |
| Saul B. Katz | IKW024 | SAUL B KATZ | \$ 7,108,639 | 4.36845% | |
| L. Thomas Osterman | IKW044 | L THOMAS OSTERMAN | \$ 1,321,950 | 0.81237% | |
| Fred Wilpon | IKW067 | FRED WILPON | \$ 1,680,520 | 1.03272% | |
| Judith Wilpon | IKW077 | JUDITH A WILPON C/O STERLING EQUITIES | \$ 11,708,302 | 7.19507% | |
| Debra Wilpon | IKW081 | RICHARD A WILPON & DEBRA WILPON J/T WROS | \$ 1,131,467 | 0.69532% | 0.34766% |
| Richard Wilpon | | | | | 0.34766% |
| Iris J. Katz and Saul B. Katz Family Foundation, Inc. | IKW083 | IRIS KATZ & SAUL KATZ FAMILY FOUNDATION | \$ 592,738 | 0.36425% | |
| College Place Enterprises LLC | IKW084 | COLLEGE PLACE ENTERPRISES PROFIT SHARING | \$ 5,492,275 | 3.37515% | |
| Judy and Fred Wilpon Family Foundation, Inc. | IKW086 | JUDY WILPON & FRED WILPON FAM FDN INC | \$ 2,011,180 | 1.23592% | |
| Philip Wachtler | IKW096 | PHILIP H WACHTLER AND ROBIN WILPON WACHTLER J/T WROS | \$ 18,032 | 0.01108% | 0.00554% |
| Robin Wilpon Wachtler | | | | | 0.00554% |
| Bruce N. Wilpon | IKW118 | BRUCE WILPON | \$ 236,770 | 0.14550% | |
| Michael Katz | IKW121 | MICHAEL KATZ & SAUL B KATZ TIC | \$ 99,000 | 0.06084% | 0.03042% |
| Saul B. Katz | | | | | 0.03042% |
| Iris Katz | IKW154 | IRIS J KATZ C/O STERLING EQUITIES | \$ 258,080 | 0.15860% | |
| Judith Wilpon | IKW155 | JUDITH A WILPON C/O STERLING EQUITIES | \$ 1,110,000 | 0.68213% | |
| Sterling 15C LLC | IKW156 | STERLING 15C LLC | \$ 17,329,002 | 10.64914% | |
| Mets Limited Partnership | IKW192 | METS LIMITED PTR SPECIAL ATTN: LEN LABITA | \$ 24,550,000 | 15.08664% | |
| Red Valley Partners | IKW198 | RED VALLEY PARTNERS | \$ 233,000 | 0.14318% | |
| David Katz | IKW201 | DAVID M KATZ | \$ 585,402 | 0.35975% | |
| Saul B. Katz | IKW238 | SAUL B KATZ - PM | \$ 1,502,544 | 0.92335% | |
| Mets Limited Partnership | IKW247 | METS LIMITED PTR #2 ATTN LEN LABITA | \$ 20,270,108 | 12.45653% | |
| Iris J. Katz and Saul B. Katz Family Foundation, Inc. | IKW252 | IRIS AND SAUL KATZ FAMILY FOUNDATION PM | \$ 1,437,799 | 0.88357% | |
| Sterling Mets LP | IKW254 | STERLING METS LP-FUNDING ACCT PL YRS DEF SLRY OBL | \$ 1,670,711 | 1.02670% | |
| Phyllis Rebelle Osterman | IKW269 | PHYLLIS REBELL OSTERMAN | \$ 107,000 | 0.06575% | |
| Saul B. Katz | IKW278 | SAUL B KATZ JJ | \$ 212,069 | 0.13032% | |
| Sterling Brunswick Corporation | IKW279 | STERLING BRUNSWICK CORP | \$ 3,020 | 0.00186% | |
| Sterling Heritage LLC | IKW287 | STERLING HERITAGE LLC | \$ 24,325 | 0.01495% | |
| Fred Wilpon Family Trust | IKW298 | FRED WILPON FAMILY TRUST TR | \$ 1,156,806 | 0.71089% | |
| Saul B. Katz Family Trust | IKW299 | SAUL B KATZ TR | \$ 421,762 | 0.25918% | |
| Sterling Equities Associates | IKW300 | STERLING EQUITIES | \$ 800,000 | 0.49162% | |
| Debra Wilpon | IKW307 | DEBRA WILPON | \$ 75,600 | 0.04646% | |
| Edward M. Tepper | | | | | 0.07439% |
| Elise C. Tepper | IKW308 | EDWARD TEPPER JACQUELINE TEPPER ELISE TEPPER TIC | \$ 363,170 | 0.22318% | 0.07439% |
| Jacqueline G. Tepper | | | | | 0.07439% |
| Sterling Thirty Venture LLC | IKW314 | STERLING THIRTY VENTURE LLC B | \$ 3,348,352 | 2.05765% | |
| Sterling Thirty Venture LLC | IKW315 | STERLING THIRTY VENTURE, LLC | \$ 211,249 | 0.12982% | |
| Marvin B. Tepper | IKW322 | MARVIN B TEPPER DEFINED BENEFIT PLAN | \$ 387,830 | 0.23833% | |
| Brooklyn Baseball Company LLC | IKW323 | BROOKLYN BASEBALL COMPANY | \$ 329,354 | 0.20240% | |
| BAS Aircraft LLC | IKW325 | BAS AIRCRAFT LLC | \$ 4,919 | 0.00302% | |
| Fred Wilpon | IKW329 | FRED WILPON SAUL B KATZ TIC TAX ESCROW | \$ 970,109 | 0.59616% | 0.29808% |
| Saul B. Katz | | | | | 0.29808% |
| Edward M. Tepper | IKW332 | EDWARD TEPPER | \$ 206,346 | 0.12681% | |
| Saul B. Katz | IKW336 | SAUL B KATZ BRIAN HAHN JR TIC | \$ 60,000 | 0.03687% | 0.03687% |
| Amy Beth Katz | | | | | 0.01243% |
| Gregory Katz | IKW345 | GREG KATZ AMY KATZ JT TEN MICHAEL KATZ TIC | \$ 86,700 | 0.05328% | 0.01243% |
| Michael Katz | | | | | 0.02842% |
| 157 J.E.S. LLC | IKW348 | 157 J.E.S LLC | \$ 389,682 | 0.23947% | |
| Coney Island Baseball Holding Company LLC | IKW349 | CONEY ISLAND BASEBALL HOLDING CO LLC | \$ 29,426 | 0.01808% | |
| Michael Katz | IKW354 | MICHAEL KATZ-SEF | \$ 108,243 | 0.06652% | |
| Sterling 20 LLC | IKW358 | STERLING 20 LLC | \$ 181,023 | 0.11124% | |
| Sterling Equities | IKW359 | STERLING EQUITIES (GREENWOOD) C/O MATTHEW BERNSTEIN MS# NYC034091 | \$ 38,499 | 0.02366% | |
| Saul B. Katz | IKW363 | SAUL B KATZ PAWLING REFINANCINC | \$ 59,061 | 0.03629% | |
| L. Thomas Osterman | IKW365 | L THOMAS OSTERMAN TRACING | \$ 12,302 | 0.00756% | |
| Marvin B. Tepper | IKW366 | MARVIN B TEPPER TRACING | \$ 27,007 | 0.01660% | |
| Estate of Leonard Schreier | IKW372 | ESTATE OF LEONARD J SCHREIER C/O SCHULTE ROTH & ZABEL KIM BAPTISTE ESQ | \$ 263,836 | 0.16213% | |
| Saul B. Katz | IKW376 | VICKY SCHULTZ SAUL B KATZ TIC | \$ 60,796 | 0.03736% | 0.03736% |
| Sterling Mets LP | IKW378 | STERLING METS (INSURANCE FUND) | \$ 350,000 | 0.21508% | |
| Arthur Friedman | IKW388 | ARTHUR FRIEDMAN ET AL TIC | \$ 45,153 | 0.02775% | 0.02775% |
| Fred Wilpon | IKW392 | FRED WILPON - APT TRACING | \$ 10,495 | 0.00645% | |
| Saul B. Katz Family Trust | IKW407 | SAUL B KATZ FAMILY TRUST 2 C/O STERLING EQUITIES | \$ 33,000 | 0.02028% | |

Schedule 2

Summary of Six-Year Transfers from BLMIS to Defendants in Excess of Principal
April 13, 2012

| Column 1 | Column 2 | Column 3 | Column 4 | Column 5 | Column 6 |
|---|-----------------|---|---------------------|------------------------|---|
| Defendant(s) | BLMIS Acct # | BLMIS Account Name | Total by Account | Proportionate Share | Proportionate Share - JT/TIC Accounts |
| Fred Wilpon Family Trust | IKW408 | FRED WILPON FAMILY TRUST 2 C/O STERLING EQUITIES | \$ 159,778 | 0.09819% | |
| Arthur Friedman | IKW412 | DAVID KATZ ET AL TIC | \$ 13,244,256 | 8.13895% | 0.03988% |
| David Katz | | | | | 0.10011% |
| Estate of Leonard Schreier | | | | | 0.15627% |
| Fred Wilpon | | | | | 1.43815% |
| Fred Wilpon Family Trust | | | | | 1.73197% |
| Jeffrey Wilpon | | | | | 0.48834% |
| Katz 2002 Descendants' Trust | | | | | 0.24335% |
| L. Thomas Osterman | | | | | 0.16929% |
| Marvin B. Tepper | | | | | 0.33207% |
| Michael Katz | | | | | 0.23359% |
| Richard Wilpon | | | | | 0.31172% |
| Saul B. Katz | | | | | 0.97423% |
| Saul B. Katz Family Trust | | | | | 1.59523% |
| Wilpon 2002 Descendants' Trust | | | | | 0.32474% |
| Mets Limited Partnership | IKW423 | METS LIMITED PARTNERSHIP SHEA STADIUM | \$ 9,101,837 | 5.59333% | |
| Arthur Friedman | IKW427 | SAUL B KATZ ET AL TIC | \$ 5,690,849 | 3.49718% | 0.03487% |
| David Katz | | | | | 0.24047% |
| Elise C. Tepper | | | | | 0.03973% |
| Estate of Leonard Schreier | | | | | 0.04997% |
| Fred Wilpon | | | | | 0.38640% |
| Fred Wilpon Family Trust | | | | | 0.79480% |
| Gregory Katz | | | | | 0.02941% |
| Iris J. Katz and Saul B. Katz Family Foundation, Inc. | | | | | 0.22256% |
| Jeffrey Wilpon | | | | | 0.07358% |
| L. Thomas Osterman | | | | | 0.04942% |
| Marvin B. Tepper | | | | | 0.16930% |
| Michael Katz | | | | | 0.10135% |
| Red Valley Partners | | | | | 0.04371% |
| Richard Wilpon | | | | | 0.16636% |
| Saul B. Katz | | | | | 0.30044% |
| Saul B. Katz Family Trust | | | | | 0.79480% |
| FFB Aviation LLC | IKW434 | FFB AVIATION LLC C/O STERLING EQUITIES | \$ 112,975 | 0.06943% | |
| Sterling American Advisors II LP | IKW436 | STERLING AMERICAN ADVISORS II LP | \$ 177,415 | 0.10903% | |
| SEE Holdco LLC | IKW449 | SEE HOLDCO LLC | \$ 60,000 | 0.03687% | |
| Gregory Katz | IKW453 | GREG KATZ (TR) C/O STERLING EQUITIES | \$ 2,398 | 0.00147% | |
| | | | \$ 162,726,768 | 100.00000% | |

EXHIBIT A

ASSIGNMENT OF DEFENDANT NET EQUITY CLAIMS

The undersigned, _____ (the "Assignor"), a party to the Settlement Agreement and Release (the "Settlement Agreement") approved by the District Court for the Southern District of New York on May __, 2012, which resolved *Picard v. Katz, et al.*, 11-CV-03605 (JSR) and which became effective on May __ 2012, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, does hereby absolutely, unconditionally and irrevocably transfer and assign, to Irving H. Picard, as trustee (the "Trustee") for the liquidation proceedings under the Securities Investor Protection Act, 15 U.S.C. §§ 78aaa *et seq.*, of Bernard L. Madoff Investment Securities LLC ("BLMIS"), all right, title and interest in and to the Assignor's Defendant Net Equity Claim[s] (as such term is defined in the Settlement Agreement); provided that the Trustee's rights with respect to the Assignor's Defendant Net Equity Claims assigned hereby are set forth in the Settlement Agreement, the terms of which are incorporated herein by reference as if restated herein in full.

IN WITNESS WHEREOF, dated the __ day of April, 2012.

Assignor:

Trustee:
